REQUEST FOR PROPOSALS
MANAGEMENT CONSULTING SERVICES

The purpose of this Request for Proposals (RFP) is to solicit proposals and award a contract to firms that would serve as Primary and Secondary Management Consultants for the New York State Division of the Budget (Division). The Consultants shall advise the Division on an as-needed basis in short-term consulting engagements (e.g., for projects with durations of a few weeks up to several months) that will focus on the review of management and fiscal issues relating to State programs, practices and initiatives.

This RFP also outlines the terms and conditions, and all applicable information required for submission of a proposal. To prevent possible disqualification and to ensure compliance with the requirements of the RFP, Proposers should pay strict attention to the proposal submission deadline and follow the format and instructions contained in this document.

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The Division reserves the right to change any of the dates stated in this RFP.

MWBE Goal: Established in each Statement of Work

SDVOB Goal: Established in each Statement of Work

Contract Term: 5 years

The procurement is in a restricted period from the date this RFP is issued until the contract has been approved. All contacts/inquiries shall be made by email to the following address: Contracts@budget.ny.gov. Designated Contacts for this Procurement:

Contracts Officer: Jason DiGianni
Contract Administrator: Barbara Farley
Additional Contacts: Glen Dame, Michelle Heaslip, Michael Pawlows, Roxanne West
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1 Scope

1.1 Background - Division of the Budget

The New York State Division of the Budget (DOB or Division) is responsible for assisting the Governor in the development of the Executive Budget and serves as the Governor’s primary advisor on fiscal matters such as local government and public authority finances. DOB manages program and policy delivery outcomes and has oversight of agency performance, and with an enhanced emphasis on governance. The synthesis of management and budget functions within DOB ensures that the policies, programs, and projects contained in the Budget are delivered in a timely, cost-effective manner.

The Division is seeking to engage Firms that would serve as Primary and Secondary Management Consultants for the Division. The Consultants shall advise the Division on an as-needed basis in short-term consulting engagements (e.g., for projects with durations of a few weeks up to several months) that will focus on the review of management and fiscal issues relating to State programs, practices and initiatives. The selected Firms will assist the Division in assessing the fiscal impact of programs and initiatives, measuring State entity performance, identifying areas where public and private sector best practices could be incorporated, and ensuring desired program results are achieved.

1.2 Services Required

The Division is seeking two qualified firms to provide management consulting services: one to serve as the Primary Management Consultant (the highest composite scorer) and one to serve as the Secondary Management Consultant (the next highest composite scorer). Upon request, the Management Consultant will be asked to provide assistance, guidance or analysis on, but not limited to, the following:

Program-Related Matters

- Assist Division staff in reviewing and evaluating programs and initiatives in one or more State entities (i.e., agencies, public authorities, boards, commissions, etc.). Identify best practices, analytical techniques, change management, or strategy development for State programs or proposed initiatives.

- Review the success, return on State investment, productivity and cost-effectiveness of programs and initiatives.

- Provide technical assistance to the Division in program issues and the valuation of assets held by State entities.

Financial Plan-Related Matters

- Analyze the fiscal impact of changes in proposed or existing State and local programs which may have an impact on the State Financial Plan.
• Evaluate and advise the Division on general or specific budgetary and management issues that may arise. This may include Consultant’s interpretation of proposed management policies and its relation to State financing and the State’s structure.

State Operations and Management

• Analyze State entity operations, policies and processes to measure performance, identify opportunities to improve service, and increase efficiency. This may include, but not be limited to:
  o Analyzing and documenting current policies and processes;
  o Performing best practice research and benchmarking to other approaches at comparable entities;
  o Conducting workflow analyses; and
  o Designing accountability programs.

• Assess the functions performed by a State entity or group of entities to address operational improvement opportunities. This may include, but not be limited to: examining statutory responsibilities, organizational structures, resources (budget, personnel, equipment, technology, facilities, and other assets), and workload.

• Assist in developing implementation plans, generating project cost estimates and providing implementation and support services that may include, but not be limited to: program management support to facilitate project completion, including implementation steps; resource allocation; quality assurance; review of project schedules; monitor and manage issues and risks; create key performance indicators and management performance reports; and develop detailed baseline analytics.

• Perform quality assurance reviews of existing operations, including the review of transactions between the Division and agencies, authorities and other parties with which the Division may work.

Management Issues, Changes and Federal Mandates/Statutes, Local Issues

• Advise the Division on public management matters, as appropriate, including modifications or conditions for which New York State would be affected. Identify ways to meet new mandates, changes or requirements.

• Assist in analyzing the cash flow and financial position of municipalities, public authorities and other State entities.

Statement of Work

It is important to note that assignments under the contract will vary, may arise quickly and, in many cases, require intensive involvement of the Consultant over a relatively short
period of time. Other projects may involve work by the Consultant over several months. The work product/deliverables expected from the Consultant may vary from project to project depending on the nature of the assignment. In some cases, the Consultant may be asked for an independent written report or assessment, including findings and recommendations. In other cases, the Consultant may be asked to supplement Division staff in performing the work required and to develop joint recommendations.

In all cases, and at the onset of each project, the Consultant and Division will detail in a statement of work (SOW) the required services, deliverables and not-to-exceed costs for the project. The Consultant will also be expected to maintain adequate documentation of its work, to work under the direction of the Division, and to satisfy all of its obligations under the SOW.

1.3 Utilization of the Primary and Secondary Consultant

The Primary Consultant shall be given first opportunity to accept an assignment, unless in the case of a condition noted below. There is no commitment by the Division that the Secondary Firm will be requested to provide any services. The Division will award assignments to the Secondary Consultant if one or more of the following conditions:

A. The Primary Consultant has an actual or potential conflict of interest that, in the sole determination of the Division, could prevent the Consultant from satisfactorily or ethically performing the assignment;

B. The Secondary Consultant has a demonstrated expertise that, in the sole determination of the Division, is superior to that of the Primary Consultant for purposes of a particular assignment;

C. The Division determines that the Primary Consultant cannot undertake or complete an assignment or make appropriate staff available within the time frames and costs established by the Division for the assignment;

D. The Division and the Primary Consultant are unable to come to agreement on the requirements and/or cost to complete an assignment;

E. The Primary Consultant and the Division mutually agree that work on a specific project be performed by the Secondary Consultant.

Further, the Secondary Consultant entering into this contract with the Division does so with the understanding that the Division may or may not engage the Secondary Consultant during the course of the contract period. At the time of the release of this Request for Proposals, actual assignments to be performed under this contract have not been identified.
2 Proposal Requirements

The Proposer should submit a proposal which clearly and concisely provides all of the information requested. A complete proposal for this RFP is comprised of three (3) separate proposals: Technical, Cost, and Administrative.

- **Technical Proposal** – The purpose of the Technical Proposal is for the Proposer to demonstrate their qualifications, competence, and capacity to undertake the engagement described herein.

- **Cost Proposal** – The Cost Proposal is the fee the Proposer will charge the Division for the services described in this RFP.

- **Administrative Proposal** – The Administrative Proposal contains standard requirements that the Proposer must agree to abide by, information requested by the Division in connection with these requirements, and additional forms to be completed by the Proposer.

2.1 Technical Proposal

The Technical Proposal should specifically detail the Proposer's experience and qualifications in providing the services sought by the Division. **Please note, in the Technical proposal, Proposers should not include any information related to their cost or the amount proposed for this RFP.**

Below is a listing of the technical information to be provided by the Proposer. Proposers must keep the Technical proposal to a maximum of 25 pages (not including table of contents, resumes, and letters of reference).

A. Table of Contents

The Table of Contents should clearly identify the location of all material within the proposal by section and page number.

B. Executive Summary

An Executive Summary highlighting significant aspects of the Proposer's Technical Proposal.

C. Project Approach

1. In this section of the proposal, the Proposer should set forth a detailed narrative describing the unique approach the Firm would apply to providing management consulting services. The narrative should outline the Firm's approach to short-term management consulting projects and contain information about the Firm's ability to provide successful and timely services to the Division. This section should address why the proposed approach is appropriate and suited for New York State.
2. Further, the Proposer should describe fully how this approach has been applied successfully by the Firm in management consulting projects for public and private sector organizations similar in size (both in terms of size of workforce and budget) and complexity to New York State government. Proposals must provide examples of how the proposed approach has achieved success in specific, relevant projects for public or private sector organizations similar in size and complexity to New York State government. The Technical Proposal must contain enough information for the evaluators to ascertain the success of the projects accomplished by the Firm, and include the metrics and factors used to demonstrate that those projects and the Firm’s approach was indeed successful.

This section must include an acknowledgement that, if selected, the Firm has the ability to respond rapidly and effectively to assignments and that those key staff approved by the Division as part of the contract, including Engagement Partners and Project Managers, will continue to be available for those assignments.

D. Staff Experience and Qualifications

In this section of the Technical Proposal, Proposers should demonstrate that the staff proposed have the knowledge and ability to perform the services described in the RFP.

1. Proposers should identify the Engagement Partner, Project Manager, and other staff including any and all subcontractors to be assigned to the engagement consistent with the title definitions in Form 2: Cost Proposal Form of the RFP. For each subcontractor(s) staff member, identify the name of the subcontractor(s) and NYS MWBE certification, if any. Include a description of the subcontractor’s past work for the Firm, if any, and how the Firm will monitor the work performed by the subcontractor.

2. Supply a project organization chart, with names and titles of the individuals to be assigned to the project. The chart should also include any subcontractors to be assigned to the project. Discuss how the team was assembled and how the work will be completed. Where applicable, Proposer should also discuss how they will monitor the work performed by the subcontractor.

3. State all relevant information regarding the qualifications and experience of the staff to be specifically assigned to the project. Given the varying nature of projects envisioned in this RFP, the Division expects that Consultants awarded contracts will identify and propose staff with skill sets and experience required of each assignment. If the proposed staff have not been included in the original proposal, the names and qualifications of additional staff members will be submitted with the SOW for the Division’s approval. Within its response to this RFP, the Firm should explain its approach for identifying and proposing individuals for each assignment, including detailed steps it will take and the criteria it will consider when forming teams for each assignment.
4. In an appendix of the Proposer’s Technical Proposal, please include resumes for all members of the consulting team, including subcontract personnel who are likely to work on the project. Resumes do not count toward the 25 page limit.

5. Provide a statement about staff availability addressing the following:

- If selected, will the Firm’s key staff proposed in the Technical Proposal be available for the duration of the project?
- Will the Firm’s key staff be available to meet in Albany and are these key staff capable of responding rapidly and effectively as requested by the Division?

Proposer should be aware that replacement staff are subject to the approval of the Division during the contract term.

E. Proposer Experience and Qualifications

In this section of the Technical Proposal, Firms should demonstrate relevant experience by providing the following:

1. A summary of the Proposer’s technical expertise that describes the unique capabilities of the Proposer. This narrative should discuss the Proposer’s ability to provide successful and timely Management Consulting services to the Division as well as a discussion of the Proposer’s approach to project management.

2. A detailed description of the direct prior experience of the Proposer comparable to those services detailed in Section 1.2, in the last five (5) years. Specifically, Proposers should detail three similar engagements of actual client projects that demonstrate the depth and breadth of the Proposer's expertise and experience.

Please indicate for each of the three client projects the following:

a. Name of client organization
b. Role of the Firm
c. Type of client (e.g., government entity (local, State, Federal), private company, etc.)
d. Project description
e. Project duration including start/end dates
f. Number of Firm staff (FTEs) involved
g. Any other information regarding the project that would assist the Division in determining the success experienced by the client

F. Reference Letters

Proposers are asked to supply the Division with letters of reference for the following:

1. At least two (2) of the Proposer’s engagements described above.
2. One (1) letter of reference for the proposed lead Engagement Partner.
3. One (1) letter of reference for the proposed lead Project Manager.

Reference letters should include the name, address, and contact information of the Client. Client should include a brief description of the type and scope of services of the engagement, as well as the term and quality of work performed during the engagement.

The Division may seek additional information from references regarding subjects that include, but are not limited to, the quality of services provided, anticipated ability to perform the services required in this RFP, and the responsiveness of the Proposer to the client during the project.

Considering the criteria, any missing letters of reference or the inability to contact a Firm or staff reference provided by a Proposer will not be looked upon favorably and may result in a reduction of points. Evaluation panel members may re-evaluate any technical scores as a result of these reference checks.

2.2 Cost Proposal

Among the selection criteria is the fee the Proposer will charge the Division for the services described in this RFP. The Cost Proposal is an integral component of a Proposer’s three-part submission. The Cost Proposal Form (Form 2) must be completed in its entirety according to the instructions included in Form 2. Proposals with a fee format different from the format indicated in Form 2 will be deemed non-responsive and the entire proposal will not be considered for evaluation or award.

Compensation for services under any resultant contract shall be determined in the SOW and shall be based upon the not-to-exceed hourly rates included in the selected Proposer’s cost proposal. Selected Proposers shall submit invoices according to the terms of the resulting contract and SOW. Selected Proposers will only be compensated for actual hours worked.

Payment for invoices submitted by the Selected Proposer shall only be rendered electronically unless payment by paper check is expressly authorized by the Director of the Budget, in his sole discretion, due to extenuating circumstances. Such electronic payment shall be made in accordance with ordinary State procedures and practices.

2.3 Administrative Proposal

The Administrative Proposal contains standard requirements the Proposer must agree to abide by, information requested by the Division in connection with these requirements, and additional forms to be completed by the Proposer. Proposers should complete and submit the administrative forms listed below:

- **Form 1**: The Proposer Information and Attestation, which will be considered an integral part of the Proposal, should be signed and submitted with the Administrative Proposal. The Proposer Information and Attestation should be signed by an individual authorized to contractually bind the Proposer. A proposal with an unsigned Proposer Information and Attestation page may be rejected. **Modified forms will not be accepted.**
• **Form 2**: The Cost Proposal Form must be signed and submitted separately from the Technical and Administrative Proposals.

• **Form 3**: Non-Collusive Bidding Certification. This form should be signed and submitted with the Administrative Proposal.

• **Form 4**: Assurances of no Conflict of Interest or Detrimental Effect. This form must be signed by an authorized executive or legal representative and should be submitted with the Administrative Proposal. **Modified forms will not be accepted.**

• **Form 5**: Article 15-A Requirements. Complete and submit the following with the Administrative Proposal:
  
  o Form 5.1 – Workforce Composition Form.
  o Form 5.2 – Equal Employment Opportunity Policy Statement – If Proposer, or any of its subcontractors, does not have an existing EEO policy statement, the Division may require the Contractor or subcontractor to adopt the attached model statement.

• **Form 6**: MWBE Diversity Practices. Complete and submit the following with the Administrative Proposal:
  
  o Form 6.1 – Responses to Diversity Practices Questionnaire, including documentation.

• **Form 7**: A Vendor Responsibility Questionnaire should be certified and filed by the proposal submission deadline. The determination is required for review and approval of the contract by the State Comptroller’s Office. Proposers are invited to file online with the New York State VendRep System, or submit a paper Questionnaire.

  For any subcontract in excess of $100,000, a Vendor Responsibility Questionnaire should be certified and filed by the proposal submission deadline. Subcontractor firms are invited to file online with the New York State VendRep System, or submit a paper Questionnaire with the Firm’s proposal.

• **Form 8**: Procurement Lobbying Form should be completed and submitted with the Administrative Proposal confirming and certifying compliance with the Procurement Lobbying Law, including disclosure of any findings of non-responsibility. **Modified forms will not be accepted.**

• **Form 9**: Disclosure of Pending or Prior Lawsuits Form should be completed and submitted with the Administrative Proposal. Proposers should provide a list of any legal proceedings or investigations concerning the Firm over the last five (5) years, if any, including the nature and outcome of any lawsuit if litigation is complete. Proposers should also specifically note any prior or pending lawsuit(s) or litigation, if any, between the Proposer and any New York State department, agency, board, or
commission. The nature of the lawsuit, if litigation is complete, and its outcome, should be described briefly.

- **Form 10**: Freedom of Information Law Redaction Request form should be submitted with the Administrative Proposal. If there is specific information in a Firm’s proposal that a Firm claims to be proprietary and/or trade secret information that meets the definition set forth in Section 87(2)(d), the Firm should provide a letter in its Administrative Proposal outlining any specific concerns regarding disclosure under the New York State Freedom of Information Law (Article 6 of the Public Officers Law).

### 2.4 Proposer Inquiries/Revisions to this RFP

Questions or requests for clarification regarding this RFP should be submitted via email, citing the RFP page and section, by 12:00 P.M. ET on August 8, 2017 to contracts@budget.ny.gov. Questions will not be accepted orally and any question received after the deadline may not be answered. The comprehensive list of questions/requests for clarifications and the official responses will be posted to the Division's website and notice of such posting will be sent to all Proposers who have been furnished the RFP by the Division.

In the event that it becomes necessary to clarify or revise this RFP, such clarification or revision will be made by addendum. Any addendum to this RFP will become part of this RFP and part of any contract awarded as a result of this RFP.

Further, if a Proposer discovers any ambiguity, conflict, discrepancy, omission or other error in this RFP, immediately notify the contacts listed on the cover page of such error and request clarification or modification to the document. The Division shall make RFP modifications by addendum, provided that any such modifications would not materially benefit or disadvantage any particular Proposer. Such clarification will be given by written notice to all parties who have been furnished an RFP by the Division.

If a Proposer fails to notify the Division of a known error or an error that reasonably should have been known, prior to the proposal submission deadline, the Proposer shall assume the risk. If awarded the contract, the Proposer shall not be entitled to additional compensation or time by reason of the error or its late correction.

There are no designated dates for release of addenda. Therefore, interested Proposers should check the Division’s website on a daily basis from time of RFP issuance through bid opening. It is the sole responsibility of the Proposer to be knowledgeable of all addenda related to this procurement.

All RFP addenda will be issued on the Division’s website at the following address: www.budget.ny.gov/contract/index.html.

### 2.5 Submission of a Complete Three-Part Proposal

Proposers must submit hardcopy and electronic versions of their proposals in accordance with the following (A Proposal Checklist is located in Appendix C to assist Proposers in compilation of proposals.):
Hardcopy Submission

1. Technical Proposal, Cost Proposal, and Administrative Proposal must be bound individually, but may be mailed in one package.

2. Clearly mark the original and each copy as “RFP – Management Consulting Services Proposal submitted by [Proposer’s name], indicating if they are original or copies.

3. Each Proposer must submit the following hardcopies:
   - Six (6) copies of the Technical Proposal
   - Two (2) sets of the Cost Proposal with original signature
   - Two (2) sets of the Administrative Proposal with original signature

4. Hardcopy proposals should be sent to the following address:

   Jason DiGianni  
   New York State Division of the Budget  
   State Capitol, Room 128  
   Albany, NY 12224

A complete package (Technical, Cost, and Administrative Proposals) must be received before 12:00 P.M. ET on August 22, 2017.

Electronic Submission

In addition to hardcopies, Proposer must send an identical, searchable, electronic version of each of the three hardcopy proposals submitted. The email subject line should identify the RFP and be sent to contracts@budget.ny.gov by the deadline outlined above. In case of a discrepancy, the hardcopy proposal shall prevail.

Submission of proposals in a manner other than as described in these instructions will not be accepted. Late hardcopy proposals will not be considered for award, even if electronic copies of the proposal arrive before the due date.

2.6 Proposal Ownership

All proposals and accompanying documentation become the property of the State of New York and will not be returned. The Division reserves the right to use any portions of the Proposer’s proposal not specifically noted as proprietary.

3 Evaluation Process

3.1 General Information

The Division will evaluate each proposal based on the “Best Value” concept. This means that the proposal that “optimizes quality, cost, and efficiency among responsive and
responsible Proposers”, shall be selected for award (State Finance Law, Article 11, § 163).

During the evaluation process, the Division may require clarifying information from a Proposer. If specific sections of the written proposal require clarification, the Division will identify the section(s) and information requested in writing. The Proposer should respond by the deadline stated in the correspondence. In addition, the Division may use the proposal, information obtained through any interviews, and the Division’s own investigation of a Proposer’s qualifications, experience, ability or financial standing, and any other material or information submitted by the Proposer in the course of evaluation and selection under this RFP. The State reserves the right to contact other sources not necessarily identified in the proposal to obtain information.

3.2 Submission Review

The Division’s Contracts Office will examine all proposals that are received in a proper and timely manner to determine if they meet the proposal submission requirements, as described in Section 2 of this RFP. Proposals that are materially deficient in meeting the submission requirements or have omitted material documents, in the sole opinion of the Division, may be rejected. All proposals passing the Submission Review will be evaluated.

3.3 Evaluation and Scoring

Technical Evaluation (76 Points)

An Evaluation Panel will independently score each Technical Proposal that meets the submission requirements of this RFP. Evaluation Panel members will score Technical Proposals to identify Proposers with the highest probability of satisfactorily providing the services described in Section 1.2 of this RFP. Evaluations will be based on the Proposer’s demonstration of its ability to provide the services required through its Technical Proposal. Individual Panel member scores will be averaged to calculate a technical score for each responsive Proposer.

MWBE Diversity Practices (4 points)

MWBE Diversity Practices will be evaluated based upon the Proposer’s responses to the Questionnaire developed by the New York State Division of Minority and Women’s Business Development, and found in Form 6.1. This Questionnaire consists of seven (7) questions for Proposers to answer. Some questions request supporting documentation to support certain answers. Additional scoring information for diversity practices can be found in Form 6.2.

Cost Evaluation (20 Points)

The Division’s Contracts Office will examine the Cost Proposal documents and review them for responsiveness to cost requirements. If a Cost Proposal is found to be non-responsive, that proposal will be eliminated from consideration. All complete, responsive proposals will receive a cost score.
Cost proposals will be evaluated on a pre-determined formula using the Proposer’s proposed hourly rates. The maximum score (20 points) will be allocated to the proposal with the lowest cost according to this formula. All other proposals will receive a proportionate score to the proposal with the lowest cost, according to the following formula:

Cost points awarded = (20 potential points) X (Low Bid / Proposer’s Bid)

3.4 Finalists and Interviews
An Initial Composite Score for each responsive Proposer will be calculated by adding the Technical Proposal points, Diversity Practices points, and Cost Proposal points. The Finalist Proposers will be the Proposers with the three highest Initial Composite Scores and any Proposers within ten percent of the average Initial Composite Score of the top-three ranked Proposers.

Finalists will be notified of the date, location, and time of their interview. The interview will be designed to allow finalists to demonstrate their ability to provide the required services. The proposed primary contact, as well as other key personnel, including the Engagement Partner and Project Manager(s) who would be responsible for providing the required services, should be present and participate in the interview.

Further information with regard to the format of this stage of the evaluation may be provided to the Proposer prior to the interview. The interview should substantiate the characteristics and attributes claimed by the proposer in the written response to the RFP. Technical scores may be revised based on the information gained from Finalist interviews. However, the interviews will not be an opportunity to cure material omissions in Proposers’ proposals and are not a substitute for a well-written proposal.

In the event that there are only one or two Finalist Proposers, the Division may choose to forego the interview at its discretion.

3.5 Final Composite Score
The Final Composite score for each responsive Proposer will be calculated by adding the final Technical Proposal points, Diversity Practices points, and Cost Proposal points for each Proposer. The Proposer with the highest final composite score will be selected as the Primary Consultant. The next highest final composite scorer will be selected as the Secondary Consultant.

4 Award of Contract/Debriefing
4.1 Contract Award
The Division expects to award two contracts as a result of this RFP. However, the Division reserves the right to not award a contract, at its sole discretion.

1. Notification of selection/non-selection will be sent to Proposers by e-mail.
2. Contract award is subject to approval of the Office of the Attorney General and the Office of the State Comptroller.

3. Upon contract award, public announcements or news releases pertaining to the contract shall not be made without the prior written consent of the Division.

4. Upon notification of selection, the following administrative forms will be required:
   - State Finance Law Section 163(4) (g) imposes certain reporting requirements on contractors doing business with New York State. Concerning these reporting requirements, the selected Proposer agrees to complete and submit an initial planned employment data report upon notification of selection by the Division. The selected Proposer also agrees to submit an annual employment report by May 15 of each year of the contract.
   - A Sales Tax Certification should be submitted upon notification of selection by the Division, as it is required for review and approval of the contract by the Comptroller’s Office.
   - Proof of Workers’ Compensation and Disability Insurance as required by Sections 57 and 220 of the New York State Workers’ Compensation Law (WCL), should be submitted by the Insurer upon notification of selection.

These forms can be reviewed in Appendix B (Sample Contract/Post Award Forms) of the RFP.

5. Compensation/Manner of Payment

Reimbursement of the Contractor will be based upon the fees stipulated in the Contract. The Division will compensate the Contractor following submission of an approvable invoice according to the contract. Payments to the selected Proposer will only be made for actual hours worked, and will not exceed the proposed hourly rate.

The State of New York is not liable for any costs incurred by a Proposer in the preparation and/or production of any proposal, or for any work performed prior to the execution of a formal contract.

4.2 Debriefings

Unsuccessful Proposers shall be notified upon the Division’s selection of a Contractor. Consistent with New York State Finance Law §163, Proposers may, within fifteen (15) calendar days of notification of selection/non-selection, request a debriefing to discuss the evaluation of their proposal.

5 Contractual Requirements

5.1 Written Contract

The written contract with the awarded Firm shall be a State contract that includes the “Standard Clauses for New York State Contracts”, attached to this RFP as Appendix A. The entire Agreement shall consist of the documents, appendices and forms listed below.
Conflicts between these documents shall be resolved in the following order of precedence:

1. Appendix A: Standard Clauses for NYS Contracts;
2. The Contract, including all exhibits, appendices, forms and attachments;
3. The RFP and any and all modifications and clarifications thereto; and
4. The Contractor’s Proposal and any clarifications thereto.

The written contract will be modeled off of the attached sample contract presented in Appendix B. Proposers offer their proposals accepting the terms and conditions of the Sample Contract.

6 Reservation of Rights

The Division reserves the right to:

- Reject any or all proposals received in response to the RFP;
- Withdraw the RFP at any time, at the Division’s sole discretion;
- Accept a proposal and any subsequent proposal for the contract from someone other than the lowest cost Proposer consistent with the criteria for the evaluation of proposals;
- Make an award under the RFP in whole or in part;
- Disqualify any Proposer whose conduct and/or proposal fails to conform to the requirements of the RFP;
- Seek clarifications and revisions of proposals;
- Use proposal information obtained through site visits, management interviews and the State’s investigation of a Proposer’s qualifications, experience, ability or financial standing, and any material or information submitted by the Proposer in response to the agency’s request for clarifying information in the course of evaluation and/or selection under the RFP;
- Prior to the bid opening, amend the RFP specifications to correct errors or oversights, or to supply additional information, as it becomes available;
- Prior to the bid opening, direct Proposers to submit proposal modifications addressing subsequent RFP amendments;
- Change any of the scheduled dates;
- Eliminate any mandatory, non-material specifications that cannot be complied with by all of the prospective Proposers;
- Waive any requirements that are not material;
- Negotiate with the successful Proposer within the scope of the RFP in the best interests of the State;
- Conduct contract negotiations with the next responsible Proposer, should the agency be unsuccessful in negotiating with the selected Proposer;
- Utilize any and all ideas submitted in the proposals received;
- Request best and final offers; and
- Require clarification at any time during the procurement process and/or require correction of arithmetic or other apparent errors for the purpose of assuring a full
and complete understanding of an Proposer’s proposal and/or to determine an Proposer’s compliance with the requirements of the solicitation.

In the event an agreement cannot be made with the highest rated qualified Proposer, the Division has the right to negotiate with the next highest rated qualified Proposer. In addition, if it is subsequently determined by the Division that the successful Proposer is non-responsible, the Division may then invite the next highest rated, qualified Proposer to enter into negotiations for purposes of executing a contract.

Unless otherwise specified in the solicitation, every offer is firm and not revocable for a period of 180 days from the bid opening.

7 Freedom of Information Law

New York State’s Freedom of Information Law (FOIL) (Public Officers Law, Article 6, Sections 84-90), available at: [http://www.dos.state.ny.us/coog/index.html](http://www.dos.state.ny.us/coog/index.html), promotes the public’s right to know the process of governmental decision-making and grants maximum public access to governmental records. The proposal of the successful Proposer and the proposals of unsuccessful Proposers may be subject to disclosure under FOIL.

However, pursuant to Section 87(2)(d) of FOIL, a State agency may deny access to those portions of proposals or portions of a successful Proposer’s contract which are "trade secrets" or submitted to an agency by a commercial enterprise or derived from information obtained from a commercial enterprise and which, if disclosed, would cause substantial injury to the competitive position of the subject enterprise.

Please note that all information that a Proposer may claim as proprietary, copyrighted or rights-reserved is not necessarily protected from disclosure under FOIL.

If there is information in a Proposer’s proposal that a Proposer claims meets the definition set forth in Section 87(2)(d), the Proposer should provide a letter in its Administrative Proposal outlining any specific concerns. Please provide a response to Form 10 indicating if a letter is included.

Failure to identify the information which a Proposer believes should be protected by Section 87(2)(d) may result in such information being disclosed if a request is received.

It is a Proposer’s responsibility to consult an attorney with any questions the Proposer may have about New York State’s Freedom of Information Law. All work products described herein may also be subject to FOIL disclosure.

The State will not honor any attempt by a Proposer either to designate its entire bid proposal as proprietary and/or to claim copyright protection for its entire proposal.

The Contractor must provide to the Division all information, records, and other written material it produces, possesses, or relies upon if such material is the object of a legitimate request to the Division pursuant to the Freedom of Information Law.
8 Ethics

8.1 Ethics Requirements
The Contractor and its Subcontractors shall not engage any person who is, or has been at any time, in the employ of the State to perform services in violation of the provisions of the New York Public Officers Law, other laws applicable to the service of State employees, and the rules, regulations, opinions, guidelines or policies promulgated or issued by the New York State Joint Commission on Public Ethics, or its predecessors (collectively, the “Ethics Requirements”). The Contractor certifies that all of its employees and those of its Subcontractors who are former employees of the State and who are assigned to perform services under this Contract shall be assigned in accordance with all Ethics Requirements. During the Term, no person who is employed by the Contractor or its Subcontractors and who is disqualified from providing services under this Contract pursuant to any Ethics Requirements may share in any net revenues of the Contractor or its Subcontractors derived from this Contract. The Contractor shall identify and provide the State with notice of those employees of the Contractor and its Subcontractors who are former employees of the State that will be assigned to perform services under this Contract, and make sure that such employees comply with all applicable laws and prohibitions. The State may request that the Contractor provide it with whatever information the State deems appropriate about each such person’s engagement, work cooperatively with the State to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the State, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. The State shall have the right to withdraw or withhold approval of any Subcontractor if utilizing such Subcontractor for any work performed hereunder would be in conflict with any of the Ethics Requirements. The State shall have the right to terminate this Contract at any time if any work performed hereunder is in conflict with any of the Ethics Requirements.

8.2 Vendor Responsibility Determination
The Division will conduct a review of each prospective Contractor’s Vendor Responsibility Questionnaire (Form 7) to provide reasonable assurances that the Contractor is responsible.

The Division will make a finding of responsibility or non-responsibility before making a contract award, considering any information that comes to its attention concerning the Vendor’s responsibility.

If the Division identifies potentially negative information in its review, the Division will notify the Contractor. If the Division makes a preliminary finding that the Contractor is non-responsible, the Division will detail in writing to the Contractor the reasons(s) for the preliminary determination, and will provide an opportunity for the Contractor to respond before the determination is finalized.

A Vendor awarded a contract is required to update their responsibility determination if a material event occurs requiring an amendment. The awarded Contractor is required to update vendor responsibility questionnaires as new information becomes available.
The Vendor awarded a contract shall at all times during the contract term remain responsible. During the term of this contract, any changes in the provided Questionnaire shall be disclosed to the Division, in writing, in a timely manner. Failure to make such disclosure may result in a determination of non-responsibility and termination of the contract. Furthermore, the awarded vendor agrees, if requested by the Division, to present evidence of its continuing legal authority to do business in New York State, its integrity, experience, ability, prior performance, and organizational and financial capacity.

The Division, in its sole discretion, reserves the right to suspend any or all activities under the contract, at any time, when it discovers information that calls into question the responsibility of the awarded Vendor. In the event of such suspension, the awarded Vendor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the awarded Vendor must comply with the terms of the suspension order. Contract activity may resume at such time as the Division issues a written notice authorizing a resumption of performance under the contract.

Upon written notice to the awarded Vendor, and a reasonable opportunity to be heard by the appropriate Division officials or staff, the contract may be terminated by the Division at the Vendor’s expense where the Vendor is determined by the Division to be non-responsible. In such event, the Division may complete contractual requirements in any manner it deems advisable and pursue available legal or equitable remedies for breach.

The Division reserves the right to terminate a contract for non-responsibility, including failure to disclose information.

This provision shall also apply to any proposed subcontractor with performing services under the resulting contract in excess of $100,000.

8.3 Public Officers Law
Contractors, consultants, vendors, and subcontractors may hire former State Agency or Authority employees. However, as a general rule and in accordance with New York Public Officers Law, former employees of the State Agency or Authority may neither appear nor practice before the State Agency or Authority, nor receive compensation for services rendered on a matter before the State Agency or Authority, for a period of two years following their separation from State Agency or Authority service. In addition, former State Agency or Authority employees are subject to a “lifetime bar” from appearing before the State Agency or Authority or receiving compensation for services regarding any transaction in which they personally participated or which was under their active consideration during their tenure with the State Agency or Authority.

9  Minority- and Women-Owned Businesses (MWBE)

9.1 NYS Executive Law Article 15-A
Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations, the Division is required to promote opportunities for the maximum feasible participation of New York State-certified Minority
and Women-owned Business Enterprises ("MWBEs") and the employment of minority
group members and women in the performance of Division contracts.

**Business Participation Opportunities for MWBEs**

For purposes of this solicitation, the Division shall establish MWBE participation goals
inclusive of New York State-certified Minority-owned Business Enterprises ("MBE")
participation and New York State-certified Women-owned Business Enterprises ("WBE")
participation (based on the current availability of qualified MBEs and WBEs) when each
SOW is issued under the Contract. If required in the SOW, a Contractor on any contract
resulting from this procurement ("Contract") must document its good faith efforts to
provide meaningful participation by MWBEs as subcontractors and suppliers in the
performance of the Contract. To that end, by submitting a response to this RFP, the
Proposer agrees that the Division may withhold payment pursuant to any Contract
awarded as a result of this RFP pending receipt of the required MWBE documentation.
The directory of MWBEs can be viewed at: [https://ny.newnycontracts.com](https://ny.newnycontracts.com). For guidance
on how the Division will evaluate a Contractor’s “good faith efforts,” refer to 5
NYCRR§142.8.

The Proposer understands that only sums paid to MWBEs for the performance of a
commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied
towards the achievement of the applicable MWBE participation goal. The portion of a
contract with an MWBE serving as a broker that shall be deemed to represent the
commercially useful function performed by the MWBE shall be 25 percent of the total
value of the contract.

In accordance with 5 NYCRR§142.13, the Proposer further acknowledges that if it is
found to have willfully and intentionally failed to comply with the MWBE participation goals
set forth in the Contract resulting from this RFP and subsequent SOWs, such finding
constitutes a breach of Contract and the Division may withhold payment as liquidated
damages.

By submitting a bid or proposal, a respondent agrees to demonstrate its good faith efforts
to achieve the applicable MWBE participation goals as may be included in the SOW by
submitting evidence thereof through the New York State Contract System ("NYSCS"),
which can be viewed at [https://ny.newnycontracts.com](https://ny.newnycontracts.com), provided, however, that a
Proposer may arrange to provide such evidence via a non-electronic method by
contacting Michael Pawlows at 518-486-4336.

If MWBE goals are set forth in an SOW, the Contractor will be required to attempt to
utilize, in good faith, any MBE or WBE identified within its MWBE Utilization Plan included
in the SOW, during the performance of the Contract. Requests for a partial or total waiver
of established goal requirements made subsequent to Contract Award may be made at
any time during the term of the Contract to the Division, but must be made no later than
prior to the submission of a request for final payment on the Contract.

If MWBE goals are set forth in a SOW, the successful Contractor will be required to
submit a quarterly MWBE Contractor Compliance & Payment Report to the Division by
the 10th day following each end of quarter over the term of the Contract documenting the progress made toward achievement of the MWBE goals of the Contract.

**Equal Employment Opportunity Requirements**

By submission of a bid or proposal in response to this solicitation, the Proposer agrees with all of the terms and conditions of the Sample Contract (Appendix B) and of Standard Clauses for All New York State Contracts (Appendix A) including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Proposer is required to ensure that it and any subcontractors awarded a subcontract for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work"), except where the Work is for the beneficial use of the Proposer, shall undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, gender identity or expression, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

The Proposer will be required to submit an Equal Employment Opportunity Policy Statement. If Bidder, or any of its subcontractors, does not have an existing EEO policy statement, the Division may require the Contractor or subcontractor to adopt the model statement (Form 5.2).

If awarded a Contract, Proposer shall submit a Workforce Utilization Report and shall require each of its Subcontractors to submit a Workforce Utilization Report, in such format as shall be required by the Division on a quarterly basis during the term of the Contract.

Further, pursuant to Article 15 of the Executive Law (the “Human Rights Law”), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, gender identity or expression, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

**Please Note:** Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.
10 Service-Disabled Veteran-Owned Business Enterprises (SDVOB)

10.1 NYS Executive Law Article 17-B

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses ("SDVOBs"), thereby further integrating such businesses into New York State’s economy. The Division of the Budget recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of Division contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, Proposers are strongly encouraged and expected to consider SDVOBs in the fulfillment of the requirements of the Contract. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

Contract Goals

A. For each SOW, the Division may set overall goals for SDVOB participation. For purposes of providing meaningful participation by SDVOBs, the Contractor should reference the directory of New York State Certified SDVOBs found at: http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf. Questions regarding compliance with SDVOB participation goals should be directed to Michael Pawlows at 518-486-4336. Additionally, following Contract execution, Contractor is encouraged to contact the Office of General Services’ Division of Service-Disabled Veterans’ Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the Contract.

B. Where SDVOB Contract Goals have been established in the SOW, the Contractor must document “good faith efforts” to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the Contract (see Required Good Faith Efforts clause below).

SDVOB Utilization Plan

A. For each SOW where SDVOB Contract Goals have been established and in accordance with 9 NYCRR § 252.2(i), Contractors are required to submit a completed SDVOB Utilization Plan on Form SDVOB 100 with their response to a SOW.

B. The Utilization Plan shall list the SDVOBs that the Proposer intends to use to perform the Contract, a description of the work that the Proposer intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the Proposer acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by
law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the Contract must be reported on a revised SDVOB Utilization Plan and submitted to the Division.

C. The Division will review the submitted SDVOB Utilization Plan and advise the Contractor of the Division’s acceptance or issue a notice of deficiency within 20 days of receipt.

D. If a notice of deficiency is issued, the Contractor agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to the Division a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by the Division to be inadequate, the Division shall notify the Contractor and direct the Contractor to submit, within five business days of notification by the Division, a request for a partial or total waiver of SDVOB participation goals on Form SDVOB 200. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

E. If awarded a Contract, Contractor certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the Contract pursuant to the prescribed SDVOB contract goals set forth in the SOW.

F. Contractor further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the Contract. Upon the occurrence of such a material breach, the Division shall be entitled to any remedy provided herein, including but not limited to, a finding of Contractor non-responsibility.

Request for Waiver

A. Prior to submission of a request for a partial or total waiver, the Contractor shall speak to Michael Pawlows at the Division for guidance.

B. In accordance with 9 NYCRR § 252.2(m), a Contractor that is able to document good faith efforts to meet the goal requirements, as set forth in the Required Good Faith Efforts clause below, may submit a request for a partial or total waiver on Form SDVOB 200, accompanied by supporting documentation. A Contractor may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by the Division at that time, the provisions of Paragraphs (C), (D) & (E) of the SDVOB Utilization Plan clause will apply. If the documentation included with the Contractor’s waiver request is complete, the Division shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.

C. Contractor shall attempt to utilize, in good faith, the SDVOBs identified within its SDVOB Utilization Plan, during the performance of the SOW. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the Contract to the Division, but must be
made no later than prior to the submission of a request for final payment on the Contract.

D. If the Division, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report (SDVOB 101) determines that Contractor is failing or refusing to comply with the contract goals established in the SOW, and no waiver has been issued in regards to such non-compliance, the Division may issue a notice of deficiency to the Contractor. The Contractor must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to the Division.

Required Good Faith Efforts

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the Contract. Evidence of required good faith efforts shall include, but not be limited to, the following:

1. Copies of solicitations to SDVOBs and any responses thereto.

2. Explanation of the specific reasons each SDVOB that responded to Contractors’ solicitation was not selected.

3. Dates of any pre-bid, pre-award or other meetings attended by Contractor, if any, scheduled by the Division with certified SDVOBs whom the Division determined were capable of fulfilling the SDVOB goals set in the Contract.

4. Information describing the specific steps undertaken to reasonably structure the Contract scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.

5. Other information deemed relevant to the waiver request.

Monthly SDVOB Contractor Compliance Report

In accordance with 9 NYCRR § 252.2(q), Contractor is required to report Monthly SDVOB Contractor Compliance to the Division during the term of the Contract for the preceding month’s activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using Form SDVOB 101 and should be completed by the Contractor and submitted to the Division, by the 10th day of each month during the term of the Contract, for the preceding month’s activity to: Michael Pawlows, Contracts Office, Michael.Pawlows@budget.ny.gov.

Breach of Contract and Damages

In accordance with 9 NYCRR § 252.2(s), any Contractor found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the Contract,
shall be found to have breached the contract and Contractor shall pay damages as set forth therein.

11 APPENDICES/FORMS

APPENDIX A: STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

January 2014

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the State’s previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller’s approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor’s business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments without the State’s prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds $50,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds $10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed $85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired...
for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of $50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds $5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform
an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State’s right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee’s identification number. The number is any or all of the following: (i) the payee’s Federal employer identification number, (ii) the payee’s Federal social security number, and/or (iii) the payee’s Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, must give the reason or reasons why the payee does not have such number or numbers.

(b) Privacy Notification. (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have not been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law and 5 NYCRR 143, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of $25,000.00, whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (ii) a written agreement in excess of $100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor’s equal employment opportunity policy that:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the Contractor’s obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over $25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Department of Economic Development’s Division of Minority and Women’s Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law, (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under Proposer certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as Proposers, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:
The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than $1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Proposers are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1992 and amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT. Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW. If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

24. PROCUREMENT LOBBYING. To the extent this agreement is a “procurement contract” as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS. To the extent this agreement is a contract as defined by Tax Law Section 5-t, if the contractor fails to make
the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

26. **IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the “Entities Determined to be Non-Responsive Proposers/Offerers pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted at: [http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf](http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf)

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded a contract and appears on the Prohibited Entities list after contract award.
THIS IS AN AGREEMENT (the “AGREEMENT”) by and between the NEW YORK STATE DIVISION OF THE BUDGET (hereinafter referred to as the “DIVISION”), and ___________ (hereinafter referred to as “__________” or “CONTRACTOR”), with offices located at _______________________________.

WITNESSETH

WHEREAS, the DIVISION works to promote the best use of State resources and is responsible for ensuring that fiscal and program priorities are properly carried out and in establishing financial and budgetary policies/programs for New York State; and

WHEREAS, the DIVISION requires the services of a management consulting firm to advise the DIVISION on an as-needed basis in short-term engagements that focus on the review of management and fiscal issues relating to State programs, practices and initiatives.

WHEREAS, to assist the DIVISION, the DIVISION issued a Request for Proposals (RFP) for Management Consulting Services, dated ______________, a copy of which is attached hereto as, Appendix B; and

WHEREAS, after an evaluation of the proposals submitted for the performance of such work, the DIVISION has determined that ___________ is a responsible and qualified firm to serve as Primary Management Consultant based upon its Proposal dated _____, a copy of which is attached hereto as Appendix C; and

WHEREAS, the Contractor is willing to serve as a management consultant to the DIVISION, as outlined in the RFP and herein;

NOW, THEREFORE, in consideration of the terms and conditions of this AGREEMENT, it is hereby mutually agreed by and between the DIVISION and the CONTRACTOR (each individually a “Party” and collectively “Parties”), as follows:
I. SERVICES

A. The DIVISION does hereby engage to provide management consulting services consistent with Section 1 of the RFP. Upon request, the Management Consultant will be asked to provide assistance, guidance or analysis on, but not limited to, the following:

Program-Related Matters

- Assist DIVISION staff in reviewing and evaluating programs and initiatives in one or more State entities (i.e., agencies, public authorities, boards, commissions, etc.). Identify best practices, analytical techniques, change management, or strategy development for State programs or proposed initiatives.

- Review the success, return on State investment, productivity and cost-effectiveness of programs and initiatives.

- Provide technical assistance to the DIVISION in program issues and the valuation of assets held by State entities.

Financial Plan-Related Matters

- Analyze the fiscal impact of changes in proposed or existing State and local programs which have impact on the State Financial Plan.

- Evaluate and advise the DIVISION on general or specific budgetary and management issues that may arise. This may include Consultant’s interpretation of proposed management policies and its relation to State financing and the State’s structure.

State Operations and Management

- Analyze State entity operations, policies and processes to measure performance, identify opportunities to improve service, and increase efficiency. This may include, but not be limited to:
  - Analyzing and documenting current policies and processes;
  - Performing best practice research and benchmarking to other approaches at comparable entities;
  - Conducting workflow analyses; and
  - Designing accountability programs.
Assess the functions performed by a State entity or group of entities to address operational improvement opportunities. This may include, but not be limited to, examining statutory responsibilities, organizational structures, resources (budget, personnel, equipment, technology, facilities, and other assets), and workload.

Assist in developing implementation plans, generating project cost estimates and providing implementation and support services that may include, but not be limited to, program management support to facilitate project completion, including implementation steps, resource allocation, quality assurance, review of project schedules, monitor and manage issues and risks, create key performance indicators and management performance reports, and develop detailed baseline analytics;

Perform quality assurance reviews of existing operations, including the review of transactions between the DIVISION and agencies, authorities and other parties the DIVISION may work with.

Management Issues, Changes and Federal Mandates/Statutes, Local Issues

Advise the DIVISION on public management matters, as appropriate, including modifications or conditions for which New York State would be affected. Identify ways to meet new mandates, changes or requirements.

Assist in analyzing the cash flow and financial position of municipalities, public authorities and other State entities.

B. The CONTRACTOR agrees to perform and furnish the services and labor required in connection herewith in accordance with all conditions, covenants and representations contained in this AGREEMENT.

C. At the onset of each project, the CONTRACTOR and DIVISION will mutually agree on a Statement of Work (SOW), which shall define the services to be provided and the total cost for the project.

II. TERM

__________ agrees to perform the aforesaid services for a five year period beginning ________, 2017 and ending ____________, 2022.

III. COMPENSATION

A. ____________’s rates for services rendered under this AGREEMENT shall not exceed the hourly rates as shown below:

<table>
<thead>
<tr>
<th>Title</th>
<th>Hourly Rate</th>
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<tbody>
<tr>
<td>Engagement Partner</td>
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<tr>
<td>Project Manager</td>
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<tr>
<td>Senior Management Analyst</td>
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<tr>
<td>Management Analyst</td>
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</tbody>
</table>

The above rates shall apply to all hourly compensation paid under this AGREEMENT. The not-to-exceed hourly rates are inclusive of personnel, travel, postage, reproduction and all other expenses related to the engagement.

B. Total payment under this AGREEMENT shall not exceed ________________.

CONTRACTOR will only be compensated for services that are performed in accordance with a mutually agreed upon SOW as described in Section I.C.

C. Billings for services rendered shall be submitted to the DIVISION after the first day of the month following the month in which the work was performed.

D. The CONTRACTOR acknowledges that it will not receive payment on any invoices submitted under this AGREEMENT unless or until it complies with the State Comptroller’s electronic payment procedures.

E. Fees shall become payable by the STATE upon receipt of an invoice in accordance with this section. Properly invoiced fees not paid within 30 days of receipt of the invoice will be paid with interest in accordance with Article 11-A of New York State Finance Law. Any and all such invoices shall contain a detailed itemization of requested compensation which shall, at the minimum include:

1. The number assigned to this AGREEMENT (________), the CONTRACTOR’s New York State Vendor Identification Number and an invoice number;
2. Name(s) and title(s) (as identified in this section) of the CONTRACTOR staff providing services;
3. Name(s) of DIVISION employees, or their designee(s), requesting the services and directly involved;
4. Specific identification of the services provided;
5. Amounts for rates, hours and total compensation; and
6. Dates upon which the services were requested and performed.

All invoices should be submitted electronically to the Division at contracts@budget.ny.gov.
F. The CONTRACTOR shall not be reimbursed for the preparation of invoices or billing statements or for the correction of any error in previously submitted invoices or billing statements.

IV. RELATIONSHIP OF PARTIES

The relationship of the CONTRACTOR to the DIVISION shall be that of an independent contractor. In accordance with such status as an independent contractor, the CONTRACTOR covenants and agrees to act consistent with such status: to neither hold itself out as, nor claim to be, an officer or employee of the DIVISION or the STATE by reason hereof; and not to, by reason hereof, make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the DIVISION or the STATE, including but not limited to Workers’ Compensation coverage, unemployment insurance benefits, Social Security coverage, or retirement membership credit.

V. STAFF

A. The CONTRACTOR shall assign ____________ as the Lead Engagement Partner, ____________ as the lead Project Manager, and the other personnel referenced in its Proposal, but is not limited in its utilization of other personnel for its duties hereunder, subject to the approval of the DIVISION.

B. CONTRACTOR staff assigned to work on this project shall be subject to approval by the DIVISION. It is highly desirable that staff assigned to work on a project continue to work on the project until completion. The DIVISION reserves the right to require security clearance and criminal history checks of the CONTRACTOR and/or staff.

C. The CONTRACTOR specifically represents and agrees that its members, officers, employees, agents, consultants, shareholders, and subcontractors have and shall possess the experience, knowledge, and character necessary to qualify them individually for the particular duties performed hereunder. All employees of the CONTRACTOR, or of its subcontractors, who shall perform the services under this AGREEMENT, shall possess the necessary qualifications, training, licenses, and permits as may be required within the jurisdiction where the services specified are to be provided or performed, and shall be legally entitled to work in such jurisdiction. All persons, corporations, or other legal entities that perform services under this AGREEMENT on behalf of CONTRACTOR shall, in performing the services, comply with all applicable Federal and State laws concerning employment in the United States.

D. This AGREEMENT is intended to secure the professional services of the CONTRACTOR because of its ability and shall not be assigned, conveyed, transferred, or disposed of by the CONTRACTOR.
E. The CONTRACTOR shall be fully responsible for performance of work by and conduct of its staff and subcontractor’s staff and that the DIVISION reserves the right to request removal of any CONTRACTOR staff or subcontractor staff if, in the DIVISION’s discretion, such staff is not performing in accordance with the AGREEMENT.

F. The CONTRACTOR shall notify the DIVISION immediately of any proposed changes in staff. The DIVISION has an absolute right and discretion to approve or disapprove any proposed changes in staff. The DIVISION, in each instance, will be provided with a summary of experience of the proposed substitute and an opportunity to interview that person, prior to giving its approval or disapproval; approval shall not be unreasonably withheld. The replacement consultant must have the skills, experience and expertise which is comparable to or better than that of the person they will replace, and will be provided at the same or lower hourly rate.

G. The CONTRACTOR and its staff must comply with the requirements of Sections 73 and 74 of the Public Officers Law, other State codes, rules, regulations and executive orders establishing ethical standards for the conduct of business with New York State. Failure to comply with these requirements may result in termination of the AGREEMENT and/or other civil or criminal proceedings as required by law.

VI. SUBCONTRACTING

The CONTRACTOR agrees not to subcontract any of its services, unless as indicated in its proposal, without the prior written approval of the DIVISION. Approval shall not be unreasonably withheld upon receipt of written request to subcontract.

The CONTRACTOR may arrange for a portion/s of its responsibilities under this AGREEMENT to be subcontracted to qualified, responsible subcontractors, subject to approval of the DIVISION. If the CONTRACTOR determines to subcontract a portion of the services, the subcontractors must be clearly identified and the nature and extent of its involvement in and/or proposed performance under this AGREEMENT must be fully explained by the CONTRACTOR to the DIVISION. The CONTRACTOR retains ultimate responsibility for all services performed under the AGREEMENT.

All subcontracts shall be in writing and shall contain provisions, which are functionally identical to, and consistent with, the provisions of this AGREEMENT including, but not limited to, the body of this AGREEMENT, Appendix A – Standard Clauses for New York State Contracts dated January 2014, and Appendix B – Request for Proposals dated August 1, 2017. Unless waived in writing by the DIVISION, all subcontracts between the CONTRACTOR and subcontractors shall expressly name the STATE, through the DIVISION, as the sole intended third party beneficiary of such subcontract. The DIVISION reserves the right to review and approve or reject any subcontract, as well as any amendment to said subcontract(s), and this right shall not make the DIVISION or the
STATE a party to any subcontract or create any right, claim, or interest in the subcontractor or proposed subcontractor against the DIVISION.

The DIVISION reserves the right, at any time during the term of the AGREEMENT, to verify that the written subcontract between the CONTRACTOR and subcontractors is in compliance with all of the provisions of this Article VI and any subcontract provisions contained in this AGREEMENT.

The CONTRACTOR shall give the DIVISION immediate notice in writing of the initiation of any legal action or suit which relates in any way to a subcontract with a subcontractor or which may affect the performance of the CONTRACTOR’s duties under the AGREEMENT. Any subcontract shall not relieve the CONTRACTOR in any way of any responsibility, duty and/or obligation of the AGREEMENT.

VII. RESERVATIONS

The DIVISION reserves the right to employ other consultants and contractors in connection with its responsibilities and functions. In that event, the CONTRACTOR will, as directed by the DIVISION, cooperate and work in harmony with such consultants and contractors.

VIII. DIVISION REPRESENTATIVES

A. The DIVISION, with the commencement of this AGREEMENT, designates as its representative, ________ and Karen Orcutt, or their designee(s).

B. Such representatives shall request, oversee, supervise and accept performance of services performed by the CONTRACTOR and shall receive any required submissions. Whenever an agreement action is to be taken or approval for services given by the DIVISION such action or approval may be given only by such representative(s) designated pursuant to this Section.

C. All Notices under this AGREEMENT shall be directed to the representatives identified in this Section, or their designee(s).

D. The DIVISION may on written notice designate other individuals as its representatives.

IX. CONFLICTS OF INTEREST

A. The CONTRACTOR has provided a form (Vendor Assurance of No Conflict of Interest or Detrimental Effect), signed by an authorized executive or legal representative attesting that the CONTRACTOR’s performance of the services does not and will not create a conflict of interest with, nor position the CONTRACTOR to breach any other contract currently in force with the State of New York, that the CONTRACTOR will not
act in any manner that is detrimental to any STATE project on which the CONTRACTOR is rendering services.

B. The CONTRACTOR hereby reaffirms the attestations made in its proposal and covenants and represents that there is and shall be no actual or potential conflict of interest that could prevent the CONTRACTOR's satisfactory or ethical performance of duties required to be performed pursuant to the terms of this AGREEMENT. The CONTRACTOR shall have a duty to notify the DIVISION immediately of any such actual or potential conflicts of interest.

C. In conjunction with any subcontract under this AGREEMENT, the CONTRACTOR shall obtain and deliver to the DIVISION, prior to entering into a subcontract, a Vendor Assurance of No Conflict of Interest or Detrimental Effect form, signed by an authorized executive or legal representative of the subcontractor. The CONTRACTOR shall also require in any subcontracting agreement that the subcontractor, in conjunction with any further subcontracting agreement, obtain and deliver to the DIVISION a signed and completed Vendor Assurance of No Conflict of Interest or Detrimental Effect form for each of its subcontractors prior to entering into a subcontract.

D. The DIVISION and the CONTRACTOR recognize that conflicts may occur in the future because the CONTRACTOR may have existing, or establish new, relationships. The DIVISION will review the nature of any relationships and reserves the right to terminate this AGREEMENT for any reason, or for cause, if, in the judgment of the DIVISION, a real or potential conflict of interest cannot be cured.

X. **PUBLIC OFFICERS LAW**

Contractors, consultants, vendors, and subcontractors may hire former State Agency or Authority employees. However, as a general rule and in accordance with New York Public Officers Law, former employees of the State Agency or Authority may neither appear nor practice before the State Agency or Authority, nor receive compensation for services rendered on a matter before the State Agency or Authority, for a period of two years following their separation from State Agency or Authority service. In addition, former State Agency or Authority employees are subject to a “lifetime bar” from appearing before the State Agency or Authority or receiving compensation for services regarding any transaction in which they personally participated or which was under their active consideration during their tenure with the State Agency or Authority.

XI. **ETHICS REQUIREMENTS**

The Contractor and its Subcontractors shall not engage any person who is, or has been at any time, in the employ of the State to perform services in violation of the provisions of the New York Public Officers Law, other laws applicable to the service of State employees, and the rules, regulations, opinions, guidelines or policies promulgated or
issue by the New York State Joint Commission on Public Ethics, or its predecessors (collectively, the "Ethics Requirements"). The Contractor certifies that all of its employees and those of its Subcontractors who are former employees of the State and who are assigned to perform services under this Contract shall be assigned in accordance with all Ethics Requirements. During the Term, no person who is employed by the Contractor or its Subcontractors and who is disqualified from providing services under this Contract pursuant to any Ethics Requirements may share in any net revenues of the Contractor or its Subcontractors derived from this Contract. The Contractor shall identify and provide the State with notice of those employees of the Contractor and its Subcontractors who are former employees of the State that will be assigned to perform services under this Contract, and make sure that such employees comply with all applicable laws and prohibitions. The State may request that the Contractor provide it with whatever information the State deems appropriate about each such person's engagement, work cooperatively with the State to solicit advice from the New York State Joint Commission on Public Ethics, and, if deemed appropriate by the State, instruct any such person to seek the opinion of the New York State Joint Commission on Public Ethics. The State shall have the right to withdraw or withhold approval of any Subcontractor if utilizing such Subcontractor for any work performed hereunder would be in conflict with any of the Ethics Requirements. The State shall have the right to terminate this Contract at any time if any work performed hereunder is in conflict with any of the Ethics Requirements.

XII. WARRANTIES

The CONTRACTOR warrants that it will perform Services in good faith and in a professional manner and that the Services will conform in all material respects to the description of such Services set forth herein. The warranties expressly set forth in this AGREEMENT are in lieu of all other warranties, expressed or implied including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose. The CONTRACTOR shall perform Services in a workmanlike manner in accordance with industry standards.

The CONTRACTOR warrants that its services shall be performed in accordance with applicable professional standards and that the CONTRACTOR shall correct, at no charge to the DIVISION or the STATE, services which fail to meet applicable professional standards and which result in obvious or patent errors in the progression of its work.

XIII. PERFORMANCE MONITORING

The CONTRACTOR's performance will be assessed by the DIVISION according to the achievement of CONTRACTOR's contractual obligations in a timely and professional manner, as set forth herein. The DIVISION will utilize progress reports and periodic meetings to ensure that the project is carried out on a timely basis and results in effective recommendations and work products.
XIV. INDEMNIFICATION AND LIABILITY

A. The CONTRACTOR shall be fully liable without monetary limitation for any act or omission of the CONTRACTOR, its employees, subcontractors and agents, and shall fully indemnify and hold harmless the STATE from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or tangible personal property or intellectual property caused by fault or negligence of CONTRACTOR, its employees, subcontractors or agents arising from the CONTRACTOR’s performance of the Contract, provided, however, that the CONTRACTOR shall not be obligated to indemnify the STATE for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act by the STATE or the acts of third parties, other than those provided by the CONTRACTOR to perform under the Agreement. In connection with the foregoing, the STATE shall give the CONTRACTOR: (i) prompt written notice of any action, claim or threat of suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at the CONTRACTOR’s sole expense, and (iii) assistance in the defense of any such action at the expense of the CONTRACTOR.

B. Except as otherwise set forth as being without monetary limitation in the indemnification paragraph above, the limit of liability shall be as follows: CONTRACTOR’s liability for any damages arising out of, or related to the AGREEMENT, whether in contract, tort or otherwise, shall in no case exceed: (i) an amount equal to two (2) times the amount paid to the CONTRACTOR for work performed under the AGREEMENT, or (ii) one million dollars ($1,000,000), whichever is greater.

C. Notwithstanding the above, the CONTRACTOR and the DIVISION shall not be liable for any consequential, indirect or special damages of any kind which may result from such performance, including, without limitation, damages resulting from loss of use or loss of profit by the DIVISION, the CONTRACTOR, or by others. CONTRACTOR shall not be liable for any missed or lost revenue associated with, or related to, the services provided pursuant to this contract.

XV. REPORTS AND FINDINGS

Any and all reports and findings rendered to the DIVISION by the CONTRACTOR shall be the exclusive property of the DIVISION and subject to its exclusive use and control. The CONTRACTOR hereby waives any and all rights to such reports and findings and the control thereof.

XVI. OWNERSHIP

CONTRACTOR will retain all rights, title and interest in and to all materials developed by it prior to the effective date of this AGREEMENT and/or developed outside of CONTRACTOR’s obligations hereunder.
XVII. CONFIDENTIALITY

A. CONTRACTOR agrees that it will not use confidential or proprietary information disclosed to CONTRACTOR in connection with the services ("Confidential Information") for any purpose other than in connection with the services. The CONTRACTOR is fully responsible for its staff, its subcontractor(s) and any subcontractor’s staff with regard to Confidential Information.

B. Information which falls into any of the following categories shall not be considered Confidential Information:

1. information that is previously rightfully known to the CONTRACTOR without restriction on disclosure;
2. information that becomes, from no breach of this AGREEMENT on the part of the CONTRACTOR, generally known in the relevant industry, or is otherwise publicly available; and
3. information that is independently developed by CONTRACTOR without use of the confidential information.

C. Except as specifically permitted in this AGREEMENT, CONTRACTOR shall not, at any time, in any fashion, form or manner, divulge, disclose, communicate or use, any Confidential Information other than in connection with the services or as otherwise provided herein.

D. CONTRACTOR may disclose Confidential Information if such information is required to be disclosed by CONTRACTOR by any law, rule, regulation, judicial or administrative process or applicable professional standards, provided that, to the extent permitted by applicable law or regulation, the CONTRACTOR notifies the DIVISION prior to any such required disclosure.

E. CONTRACTOR agrees not to issue any press releases, give or make any presentations, or give to any print, electronic or other news media information regarding the services without the express advance written approval of DIVISION.

F. CONTRACTOR agrees that, as between the PARTIES, all Confidential Information in its possession is at all times the sole property of the State.

G. Notwithstanding anything herein to the contrary, CONTRACTOR shall have the right to retain one copy of the Confidential Information and any summaries, analyses, notes or extracts prepared by CONTRACTOR which are based on or contain portions of the Confidential Information evidencing its services for the State as required by law, regulation, professional standards or reasonable business practice.
H. CONTRACTOR shall retain all Confidential Information in confidence, exercising the same standard of care used by CONTRACTOR to protect its own confidential and proprietary information, to prevent the disclosure of Confidential Information to any third party. CONTRACTOR shall not use Confidential Information for any purpose other than in furtherance of its professional services for the DIVISION.

I. CONTRACTOR understands that if it breaches, or threatens to breach this AGREEMENT, the DIVISION shall have the right to seek all equitable and legal rights (including the right to seek injunctive relief) to prevent such breach and/or to be fully compensated (including reasonable legal fees) for losses or damages resulting from such breach. CONTRACTOR acknowledges that compensation for damages may not be sufficient and that injunctive relief to prevent or limit any breach of confidentiality may be the only viable remedy to fully protect the confidential or proprietary information identified in this AGREEMENT.

XVIII. RECORDS ACCESS

DIVISION staff, others authorized by the DIVISION such as representatives of the Federal government, or other STATE agencies authorized by STATE law, shall have access to and the right to examine the books, documents, work papers, documentation of charges, or other records of the CONTRACTOR, including any and all subcontractors, involved in transactions relating to this AGREEMENT during the contract period and for a period of six years after final payment for said services.

XIX. WORK PAPER RETENTION AND AVAILABILITY

A. The work papers to be prepared by the CONTRACTOR during the AGREEMENT will be retained by the CONTRACTOR although copies thereof and access to them will be made available, upon request, to the DIVISION, representatives of the federal government and STATE agencies when authorized by the DIVISION, and other STATE agencies authorized by existing law, for a period of six (6) years following the date of the final payment under the contract. All such requests, and their disposition, shall be authorized by the DIVISION.

B. The CONTRACTOR agrees to make personnel available to explain fully all data, materials, and work papers developed during the engagement for a period of six (6) years following the date of the final payment under the contract.

XX. DISPUTES AND DISSATISFACTION/CONFLICT RESOLUTION

A. In the event the DIVISION is dissatisfied with the CONTRACTOR’s performance of the Services provided under the Agreement, including but not limited to a breach of the Agreement on the part of the CONTRACTOR, the DIVISION shall notify the CONTRACTOR of the dispute in writing. In the event the CONTRACTOR has any disputes with the DIVISION, the CONTRACTOR shall notify the DIVISION in writing.
Such notification in both cases shall hereinafter be referred to as “Notice of Conflict”, or in the case of contract breach, “Notice of Default”.

B. If either the DIVISION or the CONTRACTOR notifies the other of such dispute or dissatisfaction, the PARTY receiving the notification shall then make good faith efforts to amicably resolve the problem or settle the dispute, including meeting with the notifying PARTY’s representatives to diligently attempt to reach a mutually satisfactory result.

C. In the event of a dispute, both Parties will continue to fulfill their performance obligations under the Agreement.

D. Nothing shall limit either PARTY’s ability to pursue all legal remedies. If the Parties are unable to amicably resolve the dispute after the steps described above, then either PARTY may seek legal or equitable relief in a court of competent jurisdiction.

XXI. TERMINATION

A. The DIVISION reserves the right to terminate the services of the CONTRACTOR, in whole or in part, upon thirty (30) days written notice for any reason, or immediately for cause. Upon notice of termination, the CONTRACTOR shall stop work immediately and complete only those specific assignments, if any, subsequently approved by the DIVISION. In the event of termination other than for cause, the CONTRACTOR shall be entitled to compensation for services performed through the date of termination that are accepted by the DIVISION, and for any subsequent services that are accepted by the DIVISION, rendered in connection with any successor consultants and contractors, including transfer of records, briefing and any other services deemed necessary or desirable by the DIVISION. The CONTRACTOR agrees to cooperate to the fullest respect with any successor consultants and contractors.

B. After receipt of the Notice of Termination, the CONTRACTOR shall exercise all reasonable diligence to accomplish the cancellation or diversion of its outstanding commitments covering personal services and extending beyond the date of such termination to the extent that they relate to the performance of any work terminated by the notice.

C. The CONTRACTOR shall submit its termination claim to the DIVISION promptly after receipt of a Notice of Termination, but in no event later than 30 days from the effective date thereof, unless one or more extensions in writing are granted by the DIVISION upon written request of the CONTRACTOR within such 30-day period or authorized extension thereof. Upon failure of the CONTRACTOR to submit a termination claim within the time allowed, the DIVISION may determine, on the basis of available information, the amount, if any, due to the CONTRACTOR by reason of termination, and shall thereupon pay to the CONTRACTOR the amount so determined.
D. If the Termination for cause results from unsatisfactory performance by the CONTRACTOR, the value of the work performed by the CONTRACTOR prior to termination shall be established by the DIVISION.

E. The CONTRACTOR agrees to transfer title to the DIVISION, and to deliver in the manner, at the time, and to the extent, if any, directed by the DIVISION, such information and work products for which the CONTRACTOR produced and received compensation by the DIVISION.

F. In addition, non-compliance with the procurement laws as noted in Section XXIII of this AGREEMENT will lead to contract termination.

XXII. FORCE MAJEURE

Neither PARTY will be liable for losses, defaults, or damages under this AGREEMENT which result from delays in performing, or an inability to perform, all or any of the obligations or responsibilities imposed upon it pursuant to the terms and conditions of this AGREEMENT, due to or because of acts of God, the public enemy, acts of government, earthquakes, floods, civil strife, fire or any other cause beyond the reasonable control of the PARTY that was so delayed or so unable to perform, provided that such PARTY was not negligent and shall have used reasonable efforts to avoid and overcome such cause. Such PARTY will resume full performance of such obligations and responsibilities promptly upon removal of any such cause.

XXIII. COMPLIANCE WITH PROCUREMENT LAWS

A. By execution of this AGREEMENT, the CONTRACTOR certifies that information provided to the State of New York with respect to the Vendor Responsibility Questionnaire, Procurement Lobbying Certifications, Contractor Disclosure Form A and Section 5-a of the Tax Law (Forms ST-220-TD and ST-220-CA) is complete, true and accurate.

B. The CONTRACTOR hereby acknowledges that the Vendor Responsibility Questionnaire and certification are made part of its proposal and thereby this AGREEMENT and that any misrepresentation of fact in the Questionnaire and attachments, or in any CONTRACTOR responsibility information that may be requested by the DIVISION, may result in termination of this AGREEMENT.

The CONTRACTOR shall at all times during the contract term remain responsible. During the term of this AGREEMENT, any changes in the provided Questionnaire shall be disclosed to the DIVISION, in writing, in a timely manner. Failure to make such disclosure may result in a determination of non-responsibility and termination of this AGREEMENT. Furthermore, the CONTRACTOR agrees, if requested by the DIVISION, to present evidence of its continuing legal authority to do business in New
York State, its integrity, experience, ability, prior performance, and organizational and financial capacity.

The DIVISION, in its sole discretion, reserves the right to suspend any or all activities under this AGREEMENT, at any time, when it discovers information that calls into question the responsibility of the CONTRACTOR. In the event of such suspension, the CONTRACTOR will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the CONTRACTOR must comply with the terms of the suspension order. Contract activity may resume at such time as the DIVISION issues a written notice authorizing a resumption of performance under this AGREEMENT.

Upon written notice to the CONTRACTOR, and a reasonable opportunity to be heard by the appropriate DIVISION officials or staff, this AGREEMENT may be terminated by the DIVISION at the CONTRACTOR’S expense where the CONTRACTOR is determined by the DIVISION to be non-responsible. In such event, the DIVISION may complete contractual requirements in any manner it deems advisable and pursue available legal or equitable remedies for breach.

C. CONTRACTOR hereby acknowledges that State Finance Law Section 163(4)(g) imposes certain reporting requirements on the contractor doing business with New York State. In furtherance of these reporting requirements, the CONTRACTOR agrees to complete and submit an initial planned employment data report and an annual employment report (Forms A and B respectively). Complete instructions and forms may also be accessed at: http://www.osc.state.ny.us/agencies/guide/MyWebHelp.

XXIV. REQUIREMENTS AND PROCEDURES FOR MWBE PARTICIPATION

A. General Provisions

1. The DIVISION is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of $25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of $100,000 for real property renovations and construction.

2. The CONTRACTOR agrees, in addition to any other nondiscrimination provision of the AGREEMENT and at no additional cost to the DIVISION, to fully comply and cooperate with the DIVISION in the implementation of New York State Executive Law Article 15-A. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for certified minority and women-owned business enterprises (“MWBE”). The CONTRACTOR’s demonstration of “good faith efforts” pursuant to 5 NYCRR §142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by
New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, state or local laws.

3. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, non-responsibility and/or a breach of contract, leading to the withholding of funds or such other actions, liquidated damages pursuant to this Section or enforcement proceedings as allowed by the AGREEMENT.

B. Contract Goals

1. For purposes of this procurement, the goals for Minority- and Women-Owned Business Enterprises (“MWBE”) participation shall be as designated in each Statement of Work (SOW) based on the current availability of qualified MBEs and WBEs.

2. For purposes of providing meaningful participation by MWBEs in this AGREEMENT and achieving the MWBE Contract Goals established in each SOW, the CONTRACTOR should reference the directory of New York State certified MBWEs found at the following internet address: https://ny.newnycontracts.com.

   Additionally, the CONTRACTOR is encouraged to contact the Division of Minority and Women Business Development at (212) 803-2414 to discuss additional methods of maximizing participation by MWBEs on this AGREEMENT.

3. The CONTRACTOR understands that only sums paid to MWBEs for the performance of a commercially useful function, as that term is defined in 5 NYCRR § 140.1, may be applied towards the achievement of the applicable MWBE participation goal. The portion of a contract with an MWBE serving as a broker that shall be deemed to represent the commercially useful function performed by the MWBE shall be 25 percent of the total value of the contract.

4. Where MWBE Contract Goals have been established herein, the CONTRACTOR must document “good faith efforts, to provide meaningful participation by MWBEs as subcontractors or suppliers in the performance of the AGREEMENT.

C. Equal Employment Opportunity (EEO)

1. The CONTRACTOR agrees to be bound by the provisions of Article 15-A and the MWBE Rules and Regulations promulgated by the Division of Minority and Women’s Business Development of the Department of Economic Development (the “Division”). If any of these terms or provisions conflict with applicable law or regulations, such laws and regulations shall supersede these requirements.
2. The CONTRACTOR shall comply with the following provisions of Article 15-A:

a) CONTRACTOR and each subcontractor performing work on this AGREEMENT shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation.

b) The CONTRACTOR shall submit an EEO policy statement to the DIVISION within seventy-two (72) hours after the date of the notice by the DIVISION to award the AGREEMENT to the CONTRACTOR.

c) If the CONTRACTOR, or any of its subcontractors, does not have an existing EEO policy statement, the DIVISION may provide the CONTRACTOR or subcontractor a model statement.

d) The CONTRACTOR’s EEO policy statement shall include the following language:

   a. The CONTRACTOR will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, or marital status, will undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force.

   b. The CONTRACTOR shall state in all solicitations or advertisements for employees that, in the performance of the contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

   c. The CONTRACTOR shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative will not discriminate on the basis of race, creed, color, national origin, sex age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the CONTRACTOR’s obligations herein.

   d. The CONTRACTOR will include the provisions of Subdivisions (a) through (c) of this Subsection 2 and Paragraph “E” of this Section 4, which provides for relevant provisions of the Human Rights Law, in every subcontract in
such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the Contract.

3. Workforce Employment Utilization Report ("Workforce Report")

A. The CONTRACTOR shall submit a Workforce Report, and shall require each of its subcontractors to submit a Workforce Report, in such form as shall be required by the DIVISION on a QUARTERLY basis during the term of the AGREEMENT.

B. Separate forms shall be completed by the CONTRACTOR and any subcontractors.

4. The CONTRACTOR shall comply with the provisions of the Human Rights Law, and all other State and Federal statutory and constitutional non-discrimination provisions. The CONTRACTOR and its subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

IV. MWBE Utilization Plan

A. The CONTRACTOR represents and warrants that the CONTRACTOR has submitted an MWBE Utilization Plan, through the New York State Contract System ("NYSCS"), which can be viewed at https://ny.newnycontracts.com, provided, however, that the CONTRACTOR may arrange to provide such evidence via a non-electronic method to the DIVISION, either prior to, or at the time of, the execution of this AGREEMENT.

B. The CONTRACTOR agrees to use such MWBE Utilization Plan for the performance of MWBEs on this AGREEMENT pursuant to the prescribed MWBE goals set forth in the Statement of Work.

C. The CONTRACTOR further agrees that failure to submit and/or adhere to such MWBE Utilization Plan shall constitute a material breach of the terms of this AGREEMENT. Upon the occurrence of such a material breach, the DIVISION shall be entitled to any remedy provided herein, including but not limited to, a finding that the CONTRACTOR is non-responsive.
V. Waivers

A. For waiver requests, the CONTRACTOR should use the NYSCS, provided, however, that CONTRACTOR may arrange to provide such evidence via a non-electronic method to the DIVISION.

B. If the CONTRACTOR, after making good faith efforts, is unable to comply with MWBE goals, the CONTRACTOR may submit a Request for Waiver documenting good faith efforts by the CONTRACTOR to meet such goals. If the documentation included with the waiver request is complete, the DIVISION shall evaluate the request and issue a written notice of approval or denial within twenty (20) business days of receipt.

C. If the DIVISION, upon review of the MWBE Utilization Plan and updated QUARTERLY MWBE Contractor Compliance Reports determines that the CONTRACTOR is failing or refusing to comply with the MWBE Contract Goals and no waiver has been issued in regards to such non-compliance, the DIVISION may issue a notice of deficiency to the CONTRACTOR. The CONTRACTOR must respond to the notice of deficiency within seven (7) business days of receipt. Such response may include a request for partial or total waiver of MWBE Contract Goals.

VI. Quarterly MWBE Contractor Compliance Report

The CONTRACTOR is required to submit a quarterly MWBE Contractor Compliance Report through the NYSCS, provided, however, that the CONTRACTOR may arrange to provide such report via a non-electronic method to the DIVISION by the 10th day following the end of each quarter during the term of this AGREEMENT documenting the progress made towards achievement of the MWBE goals of this AGREEMENT.

VII. Liquidated Damages - MWBE Participation

A. Where the DIVISION determines that the CONTRACTOR is not in compliance with the requirements of this AGREEMENT and the CONTRACTOR refuses to comply with such requirements, or if the CONTRACTOR is found to have willfully and intentionally failed to comply with the MWBE participation goals, the CONTRACTOR shall be obligated to pay to the DIVISION liquidated damages.

B. In the event a determination has been made which requires the payment of liquidated damages and such identified sums have not been withheld by the DIVISION, the CONTRACTOR shall pay such liquidated damages to the DIVISION within sixty (60) days after they are assessed by the DIVISION unless prior to the expiration of such sixtieth day, the CONTRACTOR has filed a complaint with the Director of the Division of Minority and Woman Business Development pursuant to Subdivision 8 of Section 313 of the Executive Law in which event the liquidated
damages shall be payable if the Director renders a decision in favor of the DIVISION.

XXIII. Participation Opportunities for New York State Certified Service-Disabled Veteran Owned Businesses

A. General Provisions

Article 17-B of the New York State Executive Law provides for more meaningful participation in public procurement by certified Service-Disabled Veteran-Owned Businesses (“SDVOB”), thereby further integrating such businesses into New York State’s economy. The DIVISION recognizes the need to promote the employment of service-disabled veterans and to ensure that certified service-disabled veteran-owned businesses have opportunities for maximum feasible participation in the performance of DIVISION contracts.

In recognition of the service and sacrifices made by service-disabled veterans and in recognition of their economic activity in doing business in New York State, CONTRACTOR is expected to consider SDVOBs in the fulfillment of the requirements of the AGREEMENT. Such participation may be as subcontractors or suppliers, as protégés, or in other partnering or supporting roles.

B. Contract Goals

SDVOB participation goals shall be established in each Statement of Work based on the current availability of qualified SDVOBs. For purposes of providing meaningful participation by SDVOBs, the CONTRACTOR should reference the directory of New York State Certified SDVOBs found at: http://ogs.ny.gov/Core/docs/CertifiedNYS_SDVOB.pdf. Questions regarding compliance with SDVOB participation goals should be directed to Michael Pawlows at 518-486-4336.

Additionally, the CONTRACTOR is encouraged to contact the Office of General Services’ Division of Service-Disabled Veterans’ Business Development at 518-474-2015 or VeteransDevelopment@ogs.ny.gov to discuss additional methods of maximizing participation by SDVOBs on the AGREEMENT.

Where contract goals have been established in the Statement of Work, the CONTRACTOR must document “good faith efforts” to provide meaningful participation by SDVOBs as subcontractors or suppliers in the performance of the AGREEMENT (see Required Good Faith Efforts clause below).
SDVOB Utilization Plan

A. For each Statement of Work where SDVOB contract goals have been established and in accordance with 9 NYCRR § 252.2(i), CONTRACTOR will be required to submit a completed SDVOB Utilization Plan on Form SDVOB 100.

B. The Utilization Plan shall list the SDVOBs that the CONTRACTOR intends to use to perform the Contract, a description of the work that the CONTRACTOR intends the SDVOB to perform to meet the goals on the Contract, the estimated dollar amounts to be paid to an SDVOB, or, if not known, an estimate of the percentage of Contract work the SDVOB will perform. By signing the Utilization Plan, the CONTRACTOR acknowledges that making false representations or providing information that shows a lack of good faith as part of, or in conjunction with, the submission of a Utilization Plan is prohibited by law and may result in penalties including, but not limited to, termination of a contract for cause, loss of eligibility to submit future bids, and/or withholding of payments. Any modifications or changes to the agreed participation by SDVOBs after the Contract award and during the term of the AGREEMENT must be reported on a revised SDVOB Utilization Plan and submitted to the DIVISION.

C. The DIVISION will review the submitted SDVOB Utilization Plan and advise the CONTRACTOR of DIVISION acceptance or issue a notice of deficiency within 20 days of receipt.

D. If a notice of deficiency is issued, CONTRACTOR agrees that it shall respond to the notice of deficiency, within seven business days of receipt, by submitting to the DIVISION a written remedy in response to the notice of deficiency. If the written remedy that is submitted is not timely or is found by the DIVISION to be inadequate, the DIVISION shall notify the CONTRACTOR and direct the CONTRACTOR to submit, within five business days of notification by the DIVISION, a request for a partial or total waiver of SDVOB participation goals on Form SDVOB 200. Failure to file the waiver form in a timely manner may be grounds for disqualification of the bid or proposal.

E. If awarded a Contract, CONTRACTOR certifies that it will follow the submitted SDVOB Utilization Plan for the performance of SDVOBs on the AGREEMENT pursuant to the prescribed SDVOB contract goals set forth above.

F. CONTRACTOR further agrees that a failure to use SDVOBs as agreed in the Utilization Plan shall constitute a material breach of the terms of the AGREEMENT. Upon the occurrence of such a material breach, DOB shall be entitled to any remedy provided herein, including but not limited to, a finding of CONTRACTOR non-responsibility.
Request for Waiver

A. Prior to submission of a request for a partial or total waiver, CONTRACTOR shall speak to the DOB’s Designated Contact (Michael Pawlows at 518-486-4336) for guidance.

B. In accordance with 9 NYCRR § 252.2(m), CONTRACTOR that is able to document good faith efforts to meet the goal requirements, as set forth in the Required Good Faith Efforts clause below, may submit a request for a partial or total waiver on Form SDVOB 200, accompanied by supporting documentation. CONTRACTOR may submit the request for waiver at the same time it submits its SDVOB Utilization Plan. If a request for waiver is submitted with the SDVOB Utilization Plan and is not accepted by DOB at that time, the provisions of Paragraphs (C), (D) & (E) of the SDVOB Utilization Plan clause will apply. If the documentation included with the CONTRACTOR’S waiver request is complete, DOB shall evaluate the request and issue a written notice of acceptance or denial within 20 days of receipt.

C. CONTRACTOR shall attempt to utilize, in good faith, the SDVOBs identified within its Utilization Plan, during the performance of the AGREEMENT. Requests for a partial or total waiver of established goal requirements made subsequent to Contract award may be made at any time during the term of the AGREEMENT to DOB, but must be made no later than prior to the submission of a request for final payment on the AGREEMENT.

D. If DOB, upon review of the SDVOB Utilization Plan and Monthly SDVOB Compliance Report SDVOB 101 determines that CONTRACTOR is failing or refusing to comply with the contract goals and no waiver has been issued in regards to such non-compliance, DOB may issue a notice of deficiency to the CONTRACTOR. The CONTRACTOR must respond to the notice of deficiency within seven business days of receipt. Such response may include a request for partial or total waiver of SDVOB contract goals.

Waiver requests should be sent to the DIVISION.

Required Good Faith Efforts

In accordance with 9 NYCRR § 252.2(n), Contractors must document their good faith efforts toward utilizing SDVOBs on the AGREEMENT. Evidence of required good faith efforts shall include, but not be limited to, the following:

1. Copies of solicitations to SDVOBs and any responses thereto.

2. Explanation of the specific reasons each SDVOB that responded to Proposers/Contractors’ solicitation was not selected.
3. Dates of any pre-bid, pre-award or other meetings attended by CONTRACTOR, if any, scheduled by DOB with certified SDVOBs whom DOB determined were capable of fulfilling the SDVOB goals set in the AGREEMENT.

4. Information describing the specific steps undertaken to reasonably structure the AGREEMENT scope of work for the purpose of subcontracting with, or obtaining supplies from, certified SDVOBs.

5. Other information deemed relevant to the waiver request.

Monthly SDVOB CONTRACTOR Compliance Report

In accordance with 9 NYCRR § 252.2(q), CONTRACTOR is required to report Monthly SDVOB CONTRACTOR Compliance to DOB during the term of the AGREEMENT for the preceding month’s activity, documenting progress made towards achieving the Contract SDVOB goals. This information must be submitted using form SDVOB 101 and should be completed by the CONTRACTOR and submitted to the DIVISION by the 10th day of the month during the term of the AGREEMENT for the preceding month’s activity to: Michael Pawlows, Contracts Office, Michael.Pawlows@budget.ny.gov.

Breach of Contract and Damages

In accordance with 9 NYCRR § 252.2(s), any CONTRACTOR found to have willfully and intentionally failed to comply with the SDVOB participation goals set forth in the AGREEMENT, shall be found to have breached the AGREEMENT and CONTRACTOR shall pay damages as set forth therein.

XXV. WAIVER, MODIFICATION, EXECUTION, OR SEVERABILITY

No waiver or modification of the AGREEMENT or any covenant, condition, or limitation herein contained shall be valid unless in writing and executed by the Parties hereto, and no evidence of any waiver or modification shall be offered or received in evidence in any action between the Parties hereto arising out of or affecting the contract, or the rights or obligations of any Party hereunder, unless such waiver of modification is in writing, duly executed as aforesaid, and the Parties further agree that the provisions of the paragraph may not be waived except as herein set forth.

In the event that any provision of the AGREEMENT shall be declared void, voidable, illegal or invalid for any reason, such provision shall be of no force and effect only to the extent that it is so declared void, voidable, illegal or invalid. All of the provisions of the AGREEMENT not specifically found to be so deficient shall remain in full force and effect.
XXIV. CONDITIONS PRECEDENT

This AGREEMENT and any subsequent amendments to this AGREEMENT shall not be deemed executed, valid or binding unless and until approved in writing by the Offices of the Attorney General and State Comptroller.

XXV. USE BY OTHER STATE AGENCIES, PUBLIC AUTHORITIES OR ENTITIES

The DIVISION shall have the option to extend the terms and conditions related to the scope of services covered by this AGREEMENT to any other State agency, Public Authority or Entities in New York.

XXVI. ADDITIONAL SERVICES

The DIVISION may, at any time, by written notice, request changes or additions to work or services within the general scope of this AGREEMENT (not to include professional services requiring licenses or specialized expertise such as engineering, architectural, and environmental consulting, abatement, treatment, and testing work) for unanticipated needs. If any such change or addition causes an increase or decrease in the cost of, or in the time required for, performance of this AGREEMENT, an equitable adjustment shall be agreed upon by the Parties and made in the price using the billing rates set forth in the AGREEMENT, and the CONTRACTOR shall be notified in writing accordingly. A change to the scope of the AGREEMENT would be subject to the approval of the Office of the State Comptroller. Nothing in this clause shall excuse the CONTRACTOR from proceeding with this AGREEMENT as modified.

XXVII. ENTIRE AGREEMENT

This AGREEMENT and the Appendices identified in this section (“Appendices”) constitute the entire AGREEMENT between the PARTIES hereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid. This AGREEMENT shall not be changed, modified or altered in any manner except by an instrument in writing executed by the PARTIES hereto. The Appendices are hereby made a part of this AGREEMENT as if fully set forth at length herein. In the event of any discrepancy, disagreement or ambiguity among they shall be given preference in the following order to interpret and to resolve such discrepancy, disagreement or ambiguity:

A. Appendix A – Standard Clauses for New York State Contracts dated January 2014;
B. This AGREEMENT as it appears prior to the signature page incorporated herein;
C. Appendix B – Request for Proposals dated August 1, 2017 including any amendments thereto;
D. Appendix C – CONTRACTOR’s Proposal in response to the RFP.
XXVI. EXECUTORY CLAUSE

This AGREEMENT shall be deemed executory only to the extent of moneys annually appropriated and available for this purpose, and no liability on account thereof shall be incurred by the DIVISION beyond the amount appropriated. It is understood that neither this assignment nor any representation by any public employee or officer creates any legal or moral obligation to request to appropriate, or make available, moneys for the purpose of the AGREEMENT.
IN WITNESS WHEREOF, each of the Parties hereto has caused this AGREEMENT to be executed by its duly authorized officers on the day and year stated below.

Agency Certification

In addition to the acceptance of this AGREEMENT, I also certify that original copies of this signature page will be attached to all other exact copies of this contract.

Approved by:

______________________________

By: __________________________

Name: ______________________

Title: _______________________

Date: _______________________

NEW YORK STATE
DIVISON OF THE BUDGET

By: __________________________

Name: ______________________

Title: _______________________

Date: _______________________

Attorney General:
ERIC T. SCHNEIDERMAN

By: __________________________

Date: _______________________

State Comptroller:
THOMAS P. DINAPOLI

By: __________________________

Date: _______________________
CORPORATE ACKNOWLEDGMENT FORM

The acknowledgment must be fully and properly executed by an authorized person. By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and that all information provided is complete, true and accurate.

INDIVIDUAL, CORPORATION, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

STATE OF 

COUNTY OF 

On the ___ day of __________________ in the year 20 __ , before me personally appeared ____________________________________________, known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that he resides at _______________________________________________________,

Town of __________________________________________, County of _____________________________ , State of ______________________________ ; and further that:

[Check One]

☐ If an individual): he executed the foregoing instrument in his/her name and on his/her own behalf.

☐ If a corporation): he is the ________________________________ of ___________________________________________, the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

☐ If a partnership): he is the ________________________________ of __________________________________________, the partnership described in said instrument; that, by the terms of said partnership, he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

☐ If a limited liability company): he is a duly authorized member of __________________________________________, LLC, the limited liability company described in said instrument; that he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

________________________________________________________________________

Notary Public
Registration No. ___________________________ State of: ___________________________
CONTRACTOR DISCLOSURE FORMS

Chapter 10 of the Laws of 2006 amended the Civil Service Law and the State Finance Law, relative to maintaining certain information concerning contract employees working under State agency service and consulting contracts. State agency consultant contracts are defined as "contracts entered into by a state agency for analysis, evaluation, research, training, data processing, computer programming, engineering, environmental health and mental health services, accounting, auditing, paralegal, legal, or similar services" ("covered consultant contract" or "covered consultant services"). The amendments also require that certain contract employee information be provided to the state agency awarding such contracts, the Office of the State Comptroller (OSC), Division of the Budget and the Department of Civil Service (CS).

To meet these new requirements, the selected Firm agrees to complete:

Form A – Contractor’s Planned Employment Form. The successful Contractor must complete this form upon notification of selection by the Division.

Form B – Contractor’s Annual Employment Report. Throughout the term of the Contract by May 15th of each year the Contractor agrees to report the following information to the Division. For each covered consultant contract in effect at any time between the preceding April 1st through March 31st fiscal year or for the period of time such contract was in effect during such prior State fiscal year Contractor reports the:

1. Total number of employees employed to provide the consultant services, by employment category.
2. Total number of hours worked by such employees.
3. Total compensation paid to all employees that performed consultant services under such Contract.*

*NOTE: The information to be reported is applicable only to those employees who are directly providing services or directly performing covered consultant services. However, such information shall also be provided relative to employees of Subcontractors who perform any part of the service contract or any part of the covered consultant contract. This information does not have to be collected and reported in circumstances where there is ancillary involvement of an employee in a clerical, support, organizational or other administrative capacity.

Contractor agrees to simultaneously report such information to the Department of Civil Service and the Office of the State Comptroller as designated below:

Department of Civil Service
Alfred E. Smith State Office Building
Albany, NY 12239

Office of the State Comptroller
Bureau of Contracts
110 State St., 11th Floor
Albany, New York
Attn: Consultant Reporting

Contractor is advised herein and understands that this information is available for public inspection and copying pursuant to §87 of the New York State Public Officers Law (Freedom of Information Law). In the event individual employee names or social security numbers are set forth on a document, the State agency making such disclosure is obligated to redact both the name and social security number prior to disclosure.

SALES TAX CERTIFICATION INSTRUCTIONS

The Tax Law was amended to require contractors with State agencies to certify to the Department of Taxation and Finance (DTF) that they, their affiliates, their subcontractors and the affiliates of their subcontractors have a valid certificate of authority to collect New York State and local sales and compensating use taxes. Tax Law Section 5-a applies to all contracts in excess of $100,000 for the purchase by a covered agency of commodities or services, awarded pursuant to Article XI of the State Finance Law.

The successful Contractor must complete Contractor Certification Form ST-220-CA upon notification of selection by the Division. This certification to the procuring agency, also made under penalty of perjury, states that the requisite (ST-220-TD) certification has been made to DTF and, to the best of the Contractor’s knowledge, that the requisite (ST-220-TD) certification is correct and complete.

If Contractor has any questions regarding either forms, ST-220-CA or ST-220-TD, the New York State Comptroller’s Guide to Financial Operations will provide background information and the forms (http://www.osc.state.ny.us/agencies/guide/MyWebHelp/#XI/18/D.htm?Highlight=st-220).

Contractors can refer to the Department of Taxation and Finance website, or the NYS Tax Law, Section 5-a, Contractor Affiliate, Subcontractor, and Subcontractor Affiliate Sales and Compensating Use Tax Registration for additional information and guidance.

COMPLIANCE WITH NYS WORKERS’ COMPENSATION LAW

Sections 57 and 220 of the New York State Workers’ Compensation Law (WCL) provide that the Division of the Budget shall not enter into any contract unless proof of workers’ compensation and disability benefits insurance coverage is produced. Prior to entering into a contract with the Division, successful Proposers will be required to verify, on forms authorized by the New York State Workers’ Compensation Board, that they are properly insured or are otherwise in compliance with the insurance provisions of the WCL. The forms used to demonstrate compliance with the WCL are indicated below.

Please Note: The insurance provider of the successful contractor must submit this insurance verification information upon notification of selection by the Division. Any questions relating to either workers’ compensation or disability benefits coverage should be directed to the State of New York Workers’ Compensation Board, Bureau of Compliance at (518) 486-6307. Failure to comply with the requirements of this appendix will be grounds for disqualification of an otherwise successful bid.

Workers’ Compensation Requirements under WCL § 57:
To comply with coverage provisions of the WCL, Contractor must:

A) Be legally exempt from obtaining workers’ compensation insurance coverage; OR
B) Obtain such coverage from insurance carriers; OR
C) Be a Board-approved self-insured employee or participate in an authorized group self-insurance plan.

To verify compliance with the above, the DIVISION must receive one of the following properly executed Workers’ Compensation Board forms from the Contractor, the Contractor’s insurance carrier or the Workers’ Compensation Board, depending on which form is appropriate:
1) **CE-200**, Certificate of Attestation of Exemption from NYS Workers’ Compensation and/or Disability Benefits Coverage. This form is completed electronically on the Board’s website and printed out, [http://www.wcb.ny.gov/content/ebiz/wc_db_exemptions/wc_db_exemptions.jsp](http://www.wcb.ny.gov/content/ebiz/wc_db_exemptions/wc_db_exemptions.jsp); OR

2) **C-105.2** – Certificate of Workers’ Compensation Insurance. The Contractor’s insurance carrier sends this form to the DIVISION. PLEASE NOTE: The State Insurance Fund provides its own version of this form, the **U-26.3**; OR

3) **SI-12** – Certificate of Workers’ Compensation Self-Insurance. The Contractor contacts the Board’s Self-Insurance Office at 518-402-0247 to obtain this form; OR

4) **GSI-105.2** – Certificate of Participation in Worker’s Compensation Group Self-Insurance. Contractor’s Group Self-Insurance Administrator sends this form to the DIVISION.

**Disability Benefits Requirements under WCL § 220(8):**

To comply with the coverage provisions of the WCL regarding disability benefits, Contractor may:

A) Be legally exempt from obtaining disability benefits insurance coverage; OR

B) Obtain such coverage from insurance carriers; OR

C) Be a Board-approved self-insured employer.

To verify compliance with the above, the DIVISION must receive one of the following properly executed Workers’ Compensation Board forms from the Contractor, the Contractor’s insurance carrier or the Workers’ Compensation Board, depending on which form is appropriate:

1) **CE-200**, Certificate of Attestation of Exemption from NYS Workers’ Compensation and/or Disability Benefits Coverage. This form is completed electronically on the Board’s website and printed out, [http://www.wcb.ny.gov/content/ebiz/wc_db_exemptions/wc_db_exemptions.jsp](http://www.wcb.ny.gov/content/ebiz/wc_db_exemptions/wc_db_exemptions.jsp); OR

2) **DB-120.1** – Certificate of Disability Benefits Insurance. The business’s insurance carrier sends this form to the DIVISION; OR

**DB-155** – Certificate of Disability Benefits Self-Insurance. The Contractor contacts the Board’s Self-Insurance Office at 518-402-0247 to obtain this form.
APPENDIX C: PROPOSAL CHECKLIST
Management Consulting Services RFP

Firm Name ___________________________ Date ___________________________

Technical Proposal (6 hardcopies and 1 electronic version)

1. Does the proposal contain 6 hardcopies and 1 electronic version of the Technical Proposal? __________

2. Does the proposal contain all components of the Technical Proposal, as stated below?
   A. Table of Contents __________
   B. Executive Summary __________
   C. Project Approach __________
   D. Staff Experience and Qualifications
      - Identify staff consistent with definitions in Form 2 __________
      - Project Organizational Chart __________
      - Qualifications and experience of staff assigned __________
      - Staff resumes __________
      - Staff Availability __________
   E. Proposer Experience and Qualifications
      - Summary of technical expertise and capabilities __________
      - Direct prior experience __________
   F. Reference Letters
      - At least two (2) letters of reference for Proposer's engagements, and one (1) letter of reference each for lead Engagement Partner and lead Project Manager __________

3. Excluding table of contents, staff resumes, and letters of reference, is the Technical Proposal 25 pages or less? __________

Cost Proposal (2 originals and 1 electronic version)

1. Does the proposal contain 2 originals and 1 electronic version of the Cost Proposal? __________

2. Did the Firm complete and sign Form 2: Cost Proposal Form? __________

Administrative Proposal (2 originals and 1 electronic version)

1. Does the proposal contain 2 originals and 1 electronic version of the Administrative Proposal? __________

2. Did the Proposer submit executed copies of:
   - Form 1: Proposer Information and Attestation __________
   - Form 2: Cost Proposal Form __________
   - Form 3: Non-Collusive Bidding Certification __________
- Form 4: Assurances of No Conflict of Interest or Detrimental Effect
  Yes ___  No ___
- Form 5: MWBE and Equal Employment Opportunities Requirements, Forms 5.1 and 5.2
  Yes ___  No ___
- Form 6: Response to the Diversity Practices Questionnaire, with documentation
  Yes ___  No ___
- Form 7: Vendor Responsibility Questionnaire (hardcopy or submitted electronically in the State's VendRep system) for the Proposer and any subcontractor anticipated to receive a subcontract in excess of $100,000
  Yes ___  No ___
- Proposer and any subcontractor anticipated to receive a subcontract in excess of $100,000
  Yes ___  No ___
- Form 8: Procurement Lobbying Form
  Yes ___  No ___
- Form 9: Disclosure of Pending or Prior Lawsuits
  Yes ___  No ___
- Form 10: Freedom of Information Law Redaction Request
  Yes ___  No ___
**FORM 1: PROPOSER INFORMATION AND ATTESTATION**

Please Note: A “No” response to questions three through seven (3-7) may be grounds for disqualification from this procurement.

| RFP Name: | Management Consulting Services |
| Proposal Date: | August 22, 2017 @ 12:00 PM ET |

| 1 | Information Regarding the Proposer’s Firm: |
| Name: | 
| Address: | 
| City, State, Zip Code: | 
| Telephone Number: | 
| Taxpayer ID: | 
| NYS Vendor ID: | 

| 2 | Primary Contact Concerning this Proposal: |
| Name: | 
| Title: | 
| Address: | 
| City, State, Zip Code: | 
| Telephone Number: | 
| Email address: | 

| 3 | Irrevocable Offer: |
| The rates quoted are an irrevocable offer that is good through the execution of a contract. | ☐ Yes ☐ No |

| 4 | Willingness to Perform All Services: |
| The Proposer is willing to, and capable of performing all of the deliverables and services described in this RFP. | ☐ Yes ☐ No |

| 5 | Proposer Guarantees: |
| The Proposer certifies it can and will provide and make available, at a minimum, all services set forth in the RFP. | ☐ Yes ☐ No |

| 6 | Proposer Warranties: |
| 1. Proposer warrants that it is willing and able to comply with New York laws with respect to foreign (non-New York) corporations. | ☐ Yes ☐ No |
| 2. Proposer warrants that it is willing and able to obtain an errors and omissions insurance policy providing a prudent amount of coverage for the willful or negligent acts, or omissions of any officers, employees or agents thereof. | ☐ Yes ☐ No |
| 3. Proposer warrants that it will not delegate or subcontract its responsibilities under an agreement without the written permission of the Division. | ☐ Yes ☐ No |
| 4. Proposer warrants that all information provided by it in connection with this proposal is true and accurate. | ☐ Yes ☐ No |

| 7 | RFP and Contractual Requirements: |
| The Proposer agrees to be bound by the Contractual Requirements found in Section 5 of the RFP. | ☐ ☐ |
2. The Proposer has read Section 6, Reservation of Rights, and agrees that the rights and prerogatives as detailed in that Section are retained by the Division of the Budget.

3. The Proposer has read, understands, and accepts the provisions of Appendix A, Standard Clauses for NYS Contracts, and Appendix B, Sample Contract, without change or amendment.

<table>
<thead>
<tr>
<th>8</th>
<th>By my signature on this Proposer Information and Attestation, I certify that I am authorized to bind the Firm contractually and that the above information is true and accurate.</th>
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<tr>
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<td>Typed or Printed Name of Authorized Representative of the Firm</td>
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<td>Title/Position of Authorized Representative of the Firm</td>
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<td>Signature</td>
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<td>Date</td>
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FORM 2: COST PROPOSAL

Please submit two (2) hardcopy sets of the Cost Proposal with original signature and one (1) electronic version, as part of your proposal, to the addressee noted in Section 2.5 (Submission of a Complete Three-Part Proposal).

The Cost Proposal is an integral component of a Proposer's three-part submission. Proposers should take particular care to ensure the Cost Proposal is completed fully and in complete accordance with the instructions. Proposers are advised to submit questions about or requests for clarification of the Cost Proposal by August 8, 2017, the due date for submission of Proposer Inquiries.

The Cost Proposal Form must be completed in its entirety according to the following instructions:

- The Cost Proposal Form should include the not-to-exceed hourly rate for each person performing the services described in Section 1.2 of the RFP. Please specify each person by name next to the corresponding title provided on the Form. Proposers are required to use the titles provided, even if these titles are not consistent with the Proposer's existing titles.

- Hourly fees must include any reproduction, travel, postage or other expenses.

- The Cost Proposal must include an hourly rate (U.S. dollars) for each title described below and each Contract Year listed in Form 2. Do not leave blanks or enter a zero dollar amount for any rate. Do not fail to provide a rate for each title.

- The cost proposal must include only one rate for each title.

- The Cost Proposal Form should be signed by the individual who signs the proposal Proposer Information and Attestation page (an individual authorized to bind the bidding Firm contractually).

- Payments to the selected Proposer will only be made for actual hours worked, and will not exceed the proposed hourly rate.

- The Division will compensate the successful Contractor following submission of an approvable invoice, as further described in RFP Section 2.2.
Description of Titles

The following represents the general descriptions for the staffing categories to be utilized in the Proposer’s proposal.

**Qualifications of Engagement Partner:**

The Engagement Partner will serve as the Firm’s engagement manager. Individuals named to this title must have significant direct experience in providing management consulting services to a government entity, including but not limited to those services specifically outlined in Section 1.2 of the RFP. This individual must also be available to meet with Division staff in Albany, NY.

**Qualifications of Project Manager:**

The Project Manager will serve as the Firm’s project manager for this engagement. As the Project Manager, this individual will be responsible for developing a project work plan and a schedule for deliverables, coordinating and delegating the assignments for consultant staff, and serving as the point of contact for the Division regarding new issues, project status, meetings, and deliverables. The Project Manager must have at least five years of experience in management consulting work, with a minimum of two years experience in public sector projects.

**Qualifications of Senior Management Analyst:**

The Senior Management Analyst, working under the Project Manager, will be responsible for the analysis of management consulting issues on which the Division seeks advice or guidance. These issues include, but are not limited to those outlined in Section 1.2 of the RFP. The Senior Management Analyst must have at least three years experience in management consulting work, with a minimum of one year in public sector projects.

**Qualifications of Management Analyst:**

The Management Analyst, working under the Project Manager and with the Senior Management Analyst, will serve in a capacity similar to that of the Senior Management Analyst. The Management Analyst must have at least two years experience in management consulting work (public sector experience preferred).
FORM 2:
NYS Division of the Budget
Request for Proposals: Management Consulting Services
Cost Proposal Form

Firm Name: 

Fee Schedule

<table>
<thead>
<tr>
<th>Name(s)</th>
<th>Title</th>
<th>Contract Year 1 2017-18</th>
<th>Contract Year 2 2018-19</th>
<th>Contract Year 3 2019-20</th>
<th>Contract Year 4 2020-21</th>
<th>Contract Year 5 2021-22</th>
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<td>Engagement Partner</td>
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<td>Project Manager</td>
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<td>Senior Management Analyst</td>
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<td>Management Analyst</td>
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Authorized Signatory for the Firm ___________________________ Name (print or type) ___________________________

Title ___________________________ Date ___________________________
FORM 3: NON-COLLUSIVE BIDDING CERTIFICATION

In accordance with New York State Finance Law, § 139-d, by submitting its bid, each Proposer and each person signing on behalf of any other Proposer certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his or her knowledge and belief:

[1] The prices of this bid have been arrived at independently, without collusion, consultation, communication, or agreement, for the purposes of restricting competition, as to any matter relating to such prices with any other Proposer or with any competitor;

[2] Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the Proposer and will not knowingly be disclosed by the Proposer prior to opening, directly or indirectly, to any other Proposer or to any competitor; and

[3] No attempt has been made or will be made by the Proposer to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

Name: ___________________________________ Title: __________________________
Signature: ___________________________________________________________________

Joint or combined bids by Companies or Firms must be certified on behalf of each participant.

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<th>Legal name of Person, Firm or Corporation</th>
<th>Legal name of Person, Firm or Corporation</th>
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<tbody>
<tr>
<td>Name: _________________________________</td>
<td>Name: _________________________________</td>
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<tr>
<td>Title: _________________________________</td>
<td>Title: _________________________________</td>
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FORM 4: ASSURANCES OF NO CONFLICT OF INTEREST OR DETRIMENTAL EFFECT

The Firm offering to provide services pursuant to this RFP, as a contractor, joint venture contractor, or subcontractor, or consultant, attests that its performance of the services outlined in this RFP does not and will not create a conflict of interest with nor position the Firm to breach any other contract currently in force with the State of New York.

Furthermore, the Firm attests that it will not act in any manner that is detrimental to any State project on which the Firm is rendering services. Specifically, the Firm attests that:

a. The fulfillment of obligations by the Firm, as proposed in the response, does not violate any existing contracts or agreements between the Firm and the State;

b. The fulfillment of obligations by the Firm, as proposed in the response, does not and will not create any conflict of interest, or perception thereof, with any current role or responsibility that the Firm has with regard to any existing contracts or agreements between the Firm and the State;

c. The fulfillment of obligations by the Firm, as proposed in the response, does not and will not compromise the Firm’s ability to carry out its obligations under any existing contracts between the Firm and the State;

d. The fulfillment of any other contractual obligations that the Firm has with the State will not affect or influence its ability to perform under any contract with the State resulting from this RFP;

e. During the negotiation and execution of any contract resulting from this RFP, the Firm will not knowingly take any action or make any decision which creates a potential for conflict of interest or might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;

f. In fulfilling obligations under each of its State contracts, including any contract which results from this RFP, the Firm will act in accordance with the terms of each of its State contracts and will not knowingly take any action or make any decision which might cause a detrimental impact to the State as a whole including, but not limited to, any action or decision to divert resources from one State project to another;

g. No former officer or employee of the State who is now employed by the Firm, nor any former officer or employee of the Firm who is now employed by the State, has played a role with regard to the administration of this contract procurement in a manner that may violate section 73(8)(a) of the State Ethics Law; and

h. The Firm has not and shall not offer to any employee, member or director of the State any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing or promise, or in any other form, under circumstances in which it could reasonably be inferred that the gift was intended to influence said employee, member or director, or could reasonably be expected to influence said employee, member or
director, in the performance of the official duty of said employee, member or director or was intended as a reward for any official action on the part of said employee, member or director.

Firms responding to this Request for Proposals should note that the Division recognizes that conflicts may occur in the future because a Firm may have existing or new relationships. The Division will review the nature of any such new relationship and reserves the right to terminate the contract for cause if, in its judgment, a real or potential conflict of interest cannot be cured.

Name, Title: __________________________________________________________

Signature: ________________________ Date: ________________

This form must be signed by an authorized executive or legal representative.
FORM 5: MWBE AND EQUAL EMPLOYMENT OPPORTUNITIES REQUIREMENTS

CONTRACTOR REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY NEW YORK STATE EXECUTIVE LAW, ARTICLE 15-A (PARTICIPATION BY MINORITY GROUP MEMBERS AND WOMEN WITH RESPECT TO STATE CONTRACTS)

By submitting a bid or proposal, a respondent will be required to submit the following documents and information as evidence of compliance with the requirements and procedures established in Section 9 of this RFP:

A. Proposer agrees to submit with the bid a Workforce Composition Plan (Form 5.1) identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit to the Division, a workforce utilization report identifying the workforce actually utilized on the Contract if known.

B. Proposers are required to submit a Minority and Women-owned Business Enterprise and Equal Employment Opportunity Policy Statement, Form 5.2, to the Division with its bid or proposal. If Proposer, or any of its subcontractors, does not have an EEO Policy, the Division may require the Contractor or subcontractor to adopt the attached model statement.

Please Note: Failure to comply with the requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions of enforcement proceedings as allowed by the Contract.

Attachments:

- Form 5.1 – Workforce Composition Form
- Form 5.2 – Minority and Women-owned Business Enterprises Equal Employment Opportunity Policy Statement
FORM 5.1: WORKFORCE COMPOSITION FORM

INSTRUCTIONS: All Proposers submitting responses to this procurement must complete and submit this Workforce Composition Form as part of their proposal. Proposers should include only the staff that will provide services under this procurement.

<table>
<thead>
<tr>
<th>Proposer Name:</th>
<th>Federal Identification No.:</th>
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<tr>
<td>Address:</td>
<td>Procurement No.:</td>
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<td>City, State, Zip Code:</td>
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Description of Work:

Enter the total number of incumbents by race, sex, and ethnic group status in each of the EEO – Job Categories identified. See below for information regarding race/ethnicity identification and protected class group members.

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<th>EEO – JOB CATEGORY</th>
<th>TOTAL</th>
<th>MALE (M)</th>
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PREPARED BY (Signature) __________________________ Date ______________

PRINTED OR TYPED NAME AND TITLE OF PREPARER __________________________ TELEPHONE NO. __________________

EMAIL ADDRESS __________________________

CLASS DEFINITIONS

**Hispanic** – All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

**American Indian or Alaskan Native** – All persons having origins in any of the original peoples of North America, and who maintain cultural identification through tribal affiliation or community recognition.

**Vietnam Era Veteran** – A veteran who served at any time between and including January 1, 1963 and May 7, 1975.

**Black** (Not of Hispanic origin) – All persons having origins in any of the Black racial groups of Africa.

**Asian or Pacific Islander** – All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippine Islands, and Samoa.

**Disabled Individual** – Any person having a physical or mental impairment that substantially limits one or more major life activity, has a record of such an impairment; or is regarded as having such an impairment.
FORM 5.2: MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISES – EQUALLY EMPLOYMENT OPPORTUNITY POLICY STATEMENT

M/WBE AND EEO POLICY STATEMENT

I, __________________________, the (awardee/contractor) __________________________ agree to adopt the following policies with respect to the project being developed or services rendered at __________________________

This organization will and will cause its contractors and subcontractors to take good faith actions to achieve the M/WBE contract participation goals set by the State for that area in which the State-funded project is located, by taking the following steps:

(1) Actively and affirmatively solicit bids for contracts and subcontracts from qualified State-certified MBEs or WBEs, including solicitations to M/WBE contractor associations.

(2) Request a list of State-certified M/WBEs from AGENCY and solicit bids from them directly.

(3) Ensure that plans, specifications, request for proposals and other documents used to secure bids will be made available in sufficient time for review by prospective M/WBEs.

(4) Where feasible, divide the work into smaller portions to enhance participation by M/WBEs and encourage the formation of joint venture and other partnerships among M/WBE contractors to enhance their participation.

(5) Document and maintain records of bid solicitation, including those to M/WBEs and the results thereof. The Contractor will also maintain records of actions that its subcontractors have taken toward meeting M/WBE contract participation goals.

(6) Ensure that progress payments to M/WBEs are made on a timely basis so that undue financial hardship is avoided, and that bonding and other credit requirements are waived or appropriate alternatives developed to encourage M/WBE participation.

(a) This organization will not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability or marital status, will undertake or continue existing programs of affirmative action to ensure that minority group members are afforded equal employment opportunities without discrimination, and shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its workforce on state contracts.

(b) This organization shall state in all solicitation or advertisements for employees that in the performance of the State contract all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex disability or marital status.

(c) At the request of the contracting agency, this organization shall request each employment agency, labor union, or authorized representative will not discriminate on the basis of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

(d) The Contractor shall comply with the provisions of the Human Rights Law, all other State and Federal statutory and constitutional non-discrimination provisions. The Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of criminal conviction and prior arrest.

(e) This organization will include the provisions of sections (a) through (d) of this agreement in every subcontract in such a manner that the requirements of the subdivisions will be binding upon each subcontractor as to work in connection with the State contract.

Agreed to this ______________ day of ______________________, 20__

By: __________________________

Print: __________________________Title: __________________________
Pursuant to New York State Executive Law §313-a, and 5 NYCRR §142.3, all agencies and authorities must evaluate the diversity practices of Proposers to best value procurements expected to exceed $250,000, whenever practical, feasible and appropriate. Evaluating diversity practices of Proposers as part of the procurement process provides contractors with an incentive to develop mutually beneficial relationships with New York State certified MWBEs outside of the context of state contracting. These relationships help to build the capacity of MWBEs, and enhance their ability to perform ever increasing roles in state contracting.

Diversity practices are intended to be applied on procurements in which agency personnel exercise their subjective judgment in selecting one or more successful contractors on the basis of best value, not on procurements that are awarded based on lowest price.

For this procurement, the Division has determined, pursuant to New York State Executive Law Article 15-A, that the assessment of the diversity practices of Proposers to this solicitation is practical, feasible and appropriate.

Accordingly, Proposers are required to submit responses, including documentation, to the Diversity Practices Questionnaire, Form 6.1, to the Division as part of its Administrative Proposal. The questionnaire consists of eight (8) questions for Proposers to answer. Please note that some questions request supporting documentation to support certain answers. A scoring rubric for the Diversity Practices Questionnaire can be found in Form 6.2.

Attachments:

- Form 6.1 – Diversity Practices Questionnaire
- Form 6.2 – Diversity Practices Scoring Matrix
FORM 6.1: DIVERSITY PRACTICES QUESTIONNAIRE

I, ___________________, as __________________ (title) of _______________ firm or company (hereafter referred to as the company), swear and/or affirm under penalty of perjury that the answers submitted to the following questions are complete and accurate to the best of my knowledge:

1. Does your company have a Chief Diversity Officer or other individual who is tasked with supplier diversity initiatives? Yes or No

   If Yes, provide the name, title, description of duties, and evidence of initiatives performed by this individual or individuals. No points will be awarded if the response simply identifies an individual or individuals.

2. What percentage of your company’s gross revenues (from your prior fiscal year) was paid to New York State certified minority and/or women-owned business enterprises as subcontractors, suppliers, joint-venturers, partners or other similar arrangement for the provision of goods or services to your company’s clients or customers?

3. What percentage of your company’s overhead (i.e. those expenditures that are not directly related to the provision of goods or services to your company’s clients or customers) or non-contract-related expenses (from your prior fiscal year) was paid to New York State certified minority- and women-owned business enterprises as suppliers/contractors?¹

4. Does your company provide technical training² to minority- and women-owned business enterprises? Yes or No

   If Yes, provide a description of such training which should include, but not be limited to, the date the program was initiated, the names and the number of minority- and women-owned business enterprises participating in such training, the number of years such training has been offered and the number of hours per year for which such training occurs.

5. Is your company participating in a government approved minority- and women-owned business enterprise mentor-protégé program?

   If Yes, identify the governmental mentoring program in which your company participates and provide government-generated evidence, such as an agreement or acceptance letter, demonstrating the extent of your company’s commitment to the governmental mentoring program. Government-generated documentation supporting your company’s participation in a mentoring program must be provided to receive points.

6. Does your company include specific quantitative goals for the utilization of minority- and women-owned business enterprises in its non-government procurements? Yes or No

   If Yes, provide a description of such non-government procurements (including time period, goal, scope and dollar amount) and indicate the percentage of the goals that were attained.

7. Does your company have a formal minority- and women-owned business enterprise supplier diversity program? Yes or No

¹ Do not include onsite project overhead.
² Technical training is the process of teaching employees how to more accurately and thoroughly perform the technical components of their jobs. Training can include technology applications, products, sales and service tactics, and more. Technical skills are job-specific as opposed to soft skills, which are transferable.
If Yes, provide documentation of program activities and a copy of policy or program materials.

If Yes, complete the attached Utilization Plan

All information provided in connection with the questionnaire is subject to audit and any fraudulent statements are subject to criminal prosecution and debarment.

Signature of Owner/Official

Printed Name of Signatory

Title

Name of Business

Address

City, State, Zip

STATE OF ____________________________
COUNTY OF ____________________________ ) ss:

On the ______ day of ____________, 201__, before me, the undersigned, a Notary Public in and for the State of ____________, personally appeared ________________________________, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to this certification and said person executed this instrument.

____________________________
Notary Public
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<th>Question #1</th>
<th>CDO or other person tasked with function</th>
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<th></th>
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<th>Yes</th>
<th>No</th>
<th>Total</th>
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<td></td>
<td>5 pts</td>
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<td>Question #2</td>
<td>Percentage of prior yr. revenues that involved M/WBEs as subs or JVs/partners</td>
<td>20%+</td>
<td>15-19%</td>
<td>10-14%</td>
<td>5-9%</td>
<td>1-4%</td>
<td>0%</td>
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<td></td>
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<td>21 pts</td>
<td>14 pts</td>
<td>10 pts</td>
<td>6 pts</td>
<td>2 pts</td>
<td>0 pts</td>
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<td>Question #3</td>
<td>Percentage of overhead expenses paid to M/WBEs</td>
<td>20%+</td>
<td>15-19%</td>
<td>10-14%</td>
<td>5-9%</td>
<td>1-4%</td>
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<td></td>
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<td>17 pts</td>
<td>10 pts</td>
<td>7 pts</td>
<td>4 pts</td>
<td>1 pts</td>
<td>0 pts</td>
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<td>M/WBE Training</td>
<td>Robust</td>
<td>Moderate</td>
<td>Minimum</td>
<td>None</td>
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<td>17 pts</td>
<td>8 pts</td>
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<td>Question #5</td>
<td>M/WBE Mentoring</td>
<td>Robust</td>
<td>Moderate</td>
<td>Minimum</td>
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<td>Question #6</td>
<td>Written M/WBE goals included in the Company’s procurements</td>
<td>Robust</td>
<td>Moderate</td>
<td>Minimum</td>
<td>No</td>
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<td>21 pts</td>
<td>12 pts</td>
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<td>Question #7</td>
<td>Formal Supplier Diversity Program</td>
<td>Robust</td>
<td>Moderate</td>
<td>Minimum</td>
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<td>6 pts</td>
<td>4 pts</td>
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<td>Total Diversity Score (Max 100 pts)</td>
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<td>Weighted Score (Max 4 pts.)</td>
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FORM 7: VENDOR RESPONSIBILITY QUESTIONNAIRE INSTRUCTIONS

A contracting agency is required to conduct a review of a prospective contractor (and each subcontractor whose anticipated fees for the project are estimated to be over $100,000) to provide reasonable assurances that the vendor is responsible. The Division of the Budget recommends that vendors file the required Vendor Responsibility Questionnaire online via the New York State VendRep System. To enroll in and use the New York State VendRep System, see the VendRep System Instructions available at http://www.osc.state.ny.us/vendrep/index.htm.

Vendors must provide their New York State Vendor Identification Number when enrolling. To request assignment of a Vendor ID or for VendRep System assistance, contact the Office of the State Comptroller’s Help Desk at 866-370-4672 or 518-408-4672 or by email at ciohelpdesk@osc.state.ny.us.

Vendors opting to complete and submit a paper questionnaire can obtain the appropriate questionnaire from the VendRep website http://www.osc.state.ny.us/vendrep/ or may contact the Division of the Budget or the Office of the State Comptroller’s Help Desk for a copy of the paper form.

This questionnaire is designed to provide information to assist a contracting agency in assessing a vendor’s responsibility prior to entering into a contract with the vendor. Vendor responsibility is determined by a review of each Proposer or Proposer’s authorization to do business in New York, business integrity, financial and organizational capacity, and performance history.

Contractors (and subcontractors) must answer every question in the questionnaire and where appropriate additional information may be required for the questionnaire to be complete and accurate. The completed questionnaire and responses will become part of the procurement record.

It is imperative that the person completing the vendor responsibility questionnaire be knowledgeable about the proposing contractor’s business and operations as the questionnaire information must be attested to by an owner or officer of the vendor.

__________________________________

Vendor Responsibility Questionnaire Requirement:

The Proposer has (Please check the appropriate box):

____ Certified and filed the Vendor Responsibility Questionnaire on-line via the New York State VendRep System; OR

____ Included a properly executed paper copy of the Vendor Responsibility Questionnaire with the Administrative Proposal.
FORM 8: PROCUREMENT LOBBYING RESTRICTIONS

Pursuant to State Finance Law §§139-j and 139-k, certain restrictions are placed on contact with state agencies during the procurement process. The term “Contact” is defined by statute and refers to those oral, written or electronic communications that a reasonable person would infer are attempts to influence the governmental procurement. In addition to obtaining the required identifying information, the state agency must inquire and record whether the person or organization that made the contact was the Offerer or was retained, employed or designated on behalf of the Offerer to appear before or contact the Governmental Entity.

The “Restricted Period” is the period of time commencing with the earliest date of written notice, advertisement or solicitation of a request for proposal, invitation for bids, or solicitation of proposals, or any other method for soliciting a response from Offerers intending to result in a Procurement Contract with a State agency and, ending with the final contract award and approval by, where applicable, the Office of the State Comptroller.

New York State employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Offerer pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a 4 year period; the Offerer is debarred from obtaining governmental procurement contracts. Further information about these requirements can be found at: http://ogs.ny.gov/aboutOgs/regulations/defaultAdvisoryCouncil.asp.

Any Firm responding to the solicitation must complete the form found below and submit it to the State agency.

Questions regarding this form may be directed to the Designated Contacts for this solicitation:

Contracts Officer: Jason DiGianni
Contract Administrator: Barbara Farley
Additional Contacts: Glen Dame, Michelle Heaslip, Michael Pawlows, Roxanne West
PROCUREMENT LOBBYING FORM

1. Offerer/Proposer certifies that it understands and agrees to comply with the procedures of the NYS Division of the Budget relative to permissible contacts as required by State Finance Law Section 139-j (3) and Section 139-j (6) (b).

2. CONTRACTOR DISCLOSURE OF PRIOR NON-RESPONSIBILITY DETERMINATIONS
Pursuant to Procurement Lobbying Law (SFL §139-j)

(a) Has any Governmental Entity made a finding of non-responsibility regarding the individual or entity seeking to enter into the Procurement Contract in the previous four years?
   ☐ Yes ☐ No

   If yes, please answer the following question:

(b) Was the basis for the finding of non-responsibility due to a violation of State Finance Law §139-j?
   ☐ Yes ☐ No

   If “Yes” was the basis for the finding of non-responsibility due to the intentional provision of false or incomplete information to a governmental entity?
   ☐ Yes ☐ No

   If “Yes”, please provide details regarding the finding of non-responsibility:

   Governmental Entity: ____________________________
   Date of Finding of Non-Responsibility: ____________________________
   Basis of Finding of Non-Responsibility (attach additional sheets as necessary) ____________________________

3. Has any governmental entity terminated or withheld a procurement contract with the above-named individual or entity due to the intentional provision of false or incomplete information?
   ☐ Yes ☐ No

   If yes, provide details:
   Governmental Entity: ____________________________
   Date of Termination or Withholding of Contract: ____________________________
   Basis of Termination or Withholding: (add additional pages if necessary) ____________________________

4. Offerer/Proposer certifies that all information provided to the Division of the Budget, with respect to State Finance Law Section 139-k is complete, true and accurate.

Name of Offerer’s Firm/Company: ____________________________
Offerer’s Business Address: ____________________________
Offerer’s signature: ____________________________ Date: ____________________________
I understand that my signature represents that I am signing and responding to all certifications listed above.

Print Name: ____________________________
Title of Person signing this form: ____________________________

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Disclosure of Pending or Prior Lawsuits must be documented and submitted with the Administrative Proposal. Please include the following information:

A. Proposers must provide a list of any legal proceedings or investigations concerning the Firm over the last five (5) years, if any, including the nature and outcome of any lawsuit if litigation is complete. Proposers must also specifically note any prior or pending lawsuit(s) or litigation between the Proposer and any New York State department, agency, board, or commission, if any. The nature of the lawsuit and its outcome, if litigation is complete, should be described briefly below.

B. Disclose any existing or contemplated relationship with any other person or entity, including relationships with any member, shareholders of 5% or more, parent, subsidiary, or affiliated firm, which would constitute an actual or potential conflict of interest or appearance of impropriety, relating to other clients/customers of the Respondent or former officers and employees of the Agencies and their Affiliates, in connection with your rendering services enumerated in this RFP. If a conflict does or might exist, please describe how your Staffing Firm would eliminate or prevent it. Indicate what procedures will be followed to detect, notify the Agencies of, and resolve any such conflicts.

C. The Proposer must disclose whether it, or any of its members, shareholders of 5% or more, parents, affiliates, or subsidiaries, have been the subject of any investigation or disciplinary action by the New York State Commission on Public Integrity or its predecessor State entities (collectively, “Commission”), and if so, a brief description must be included indicating how any matter before the Commission was resolved or whether it remains unresolved.

Does the Proposer have any information pertaining to the above that must be disclosed? If Yes, the Proposer must disclose the requisite information as part of the Proposer’s Administrative Proposal.

   Yes __________  No __________
FORM 10: FREEDOM OF INFORMATION LAW REDACTION REQUEST

The Proposer should indicate below if there is specific information in a Proposer’s proposal that a Proposer claims to be proprietary and/or trade secret information that meets the definition set forth in Section 87(2)(d), the Proposer should provide a letter in its Administrative Proposal outlining any specific concerns regarding disclosure under the New York State Freedom of Information Law (Article 6 of the Public Officers Law).

Is the Proposer submitting a Freedom of Information Law Redaction request? If Yes, Proposer should include the specific details of its request as part of the Proposer’s Administrative Proposal.

Yes ________  No __________